

*Sum Thomas*

*A N Lent 1607*

# ABRIDGMENT

OF THE

# COMMON LAW,

With the Cases thereof :

Drawne out of all the Old and New Books  
of LAW :

AND  
REDUCED INTO CHAPTERS,  
Sections, and Divisions :

FITTED

For the Use and Benefit of all Practisers and Students.

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By WILLIAM HUGHES of Grays Inne Esq;

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*With an exact Table, in which may be found the Principall matters  
therein contained.*

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L O N D O N,

Printed by T. R. for H. Twyford, T. Dring, and J. Place, and are to be  
sold at their Shops in Vine Court middle Temple, the George  
in Fleetstreet near Cliffords Inne, and at Furnivalls Inne Gate  
in Holborne, 1657.



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by WILLIAM HUGHES of Grays Inn Esq;

Printed by W. H. ...  
in the Strand near St. Dunstons Church  
and at the ...

To the Right Honourable,  
**S<sup>r</sup> THOMAS WIDDRINGTON, K<sup>t</sup>.**  
Serjeant at the Common Law, One of the  
Lords Commissioners of the Treasury of Eng-  
land, Speaker of the Parliament of the Com-  
mon wealth of *England, Scotland, and*  
*Ireland*, Assembled the 17th. of  
September, 1656.

My Lord,

**T**WO yeares past, there was brought unto mee  
a Book, made and published in Print, in the  
time of the late *Queen Elizabeth*, under the  
Name of an unknown Author, conteining  
certain Titles of the Common Law of *England*, and the  
Cases thereupon, distributed into Chapters, Sections, and  
Divisions, which was written in the French tongue:  
Which Booke (having beene begun in some small part  
thereof, not exceeding five or six sheets of Paper, to be  
translated by a person altogether unknown unto me) ei-  
ther in respect of the difficulty of the worke, or the unwill-  
ingness of the person to undertake the Labour which hee  
should have bestowed in the Translation, or for some o-  
ther cause, was not proceeded in. The said printed Booke,  
with so much thereof as was translated being left with me,  
I was requested to peruse it, to examine that part thereof  
which was translated, to compare it with the Originall,  
and to examine the severall cases therein, with the Term  
Books, Abridgments, and other Books, out of which the  
Cases were extracted, to translate the remaining part, to



## *The Epistle Dedicatory.*

correct such errors or mistakes, as I should find in the Imprinted Originall, and to add such further matter and Cases thereunto, as might make the same to be a perfect work, usefull and beneficiall for all Students of the Common Law. This (my Lord) being a task which required time, care and study for the accomplishment thereof: I took some time to consider of it, at the last, upon the perswasion of some freinds, and some other encouragements, I undertook both the translations, as also to make it a compleat and perfect work: For the doing of which, I have perused all the bookes, and cases cited in the first Impression, corrected all such Errors and other mistakes (which were many) as were in the first Impression, or the translated part thereof: I have added thereunto many new titles of the Law, which were not in the first Impression with the cases therein, in the same Method by way of Chapters, Sections, and Divisions, as the first worke was: And I have added unto every of the titles of the first Impression, such materiall cases, and points of Law, as I could finde or remember, to have been published or reported in print, since the time of the said late Queen, besides some Marginall Notes, so as the enlargement of this present whorke, is neer as much again as was the first Impression, it being therefore now made as a new thing, I have caused it to be imprinted under a new title, which I have called, the first part of Νεωτομία.

The said first worke (My Lord) being finished, I took into my consideration, the many Acts and publick Ordinances of Parliament, made since Anno 1640. unto this present time, most of which being imprinted in many parcells, and scattered sheets of Paper, (very hard now to be gotten together) I conceived, (if the same might be abridged,



## *The Epistle Dedicatory.*

abridged, and brought into one Volume, according to the Series of time, they were made and published in) it might with a little charge be bought, and so made usefull to all the people of this Common-Wealth, all the Acts of Parliament, and many of the said Ordinances being yet in force, and binding the people in their Estates, Rights, and Interests. And further I conceived, that by such a work, most of the transactions of the late long Parliament (which continued neer thirteen years) might be viewed, considered and taken notice of: these (my Lord) were some of the Motives (amongst others) that (this last year) induced me to collect and make an Abridgment of all the said Acts of Parliament and publick Ordinances, as also of other Ordinances and publick Orders, according as is mentioned in the title Page of the second part of my *Νομο-τομια*: Both parts of which being now finished, I have caused to be imprinted and published, for the good and ease of all the people of the Common-Wealth, and for the use and benefit of all Students of the Common Law, *Gratum spero opus.*

My Lord, I have taken the boldnesse upon me to publish these my weak Labours under the Patronage of your Lordship, which I have done for many respects. First, Because your Lordship in the opinion of all men, is, and hath ever been accounted, a great Lover, and a constant maintainer and Defender of the Common Law of this Nation. Secondly, Because your Lordship being now in that high place of Honour (Speaker, or Prolocutor of the Parliament) a Part of the Legislative power doth reside in your Lordship, and the Parliament, an evident proof of which, is that *Gestamen Hono* is which is born before your Lordship, (as the like was) which is elegantly

### *The Epistle Dedicatory.*

ly expressed by *Virgil* in the seventh book of his *Aeneids*, for when the Ambassadors of *Aeneas* presented some of the Reliques of *Troy* to *Latinus* King of *Latium*, it is sayd of the same

*Hoc Priami Gestamen erat, cum jura vocatis  
More daret Populis —*

But especially (my Lord) in a thankfull acknowledgment of the great favours, which I have ever received from your Lordship, which I know not how otherwise to expresse, then in these kind of Presentments; Pardon I beseech your Lordship this my great boldness, & to accept of these my weak endeavours, and performances, published in the seventieth year of my age; and if your Lordship shall be pleased at any time hereafter, to cast your eyes upon these works, or shall peruse the same, I humbly beseech your Lordship to passe by the Errors I have run into in the whole work, and so I leave it to the favourable censure of your Lordship, wishing unto your Lordship, increase of Honour here upon Earth, and the eternall happinesse of Heaven hereafter: For which the Prayers shall never be wanting of

*Your Lordships most obliged and  
sincerely Devoted Servant,*

**WILLIAM HUGHES.**



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THE  
ABRIDGEMENT OF  
CASES

Concerning the Titles most materiall for  
the Students and Practisers of the  
LAWES of the Realme:

Digested into certaine apt Divisions under the same  
Title; done into English for the benefit of the younger  
Students.

Abbot, Prior, Parson, Bishop, Dean, Master of a Colledge.

I. In what person the Property of Goods, and right of Land is.



NOTE, That the property of the Goods of an  
Abbot is in the Abbot, and in the House also;  
adjudged 9 H. 6. fol. 25. Abbot 1.

Note, By the Court it was adjudged, That if  
a Lease were made to an Abbot for life, and he  
is after translated to another Abbey, the suc-  
ceeding Abbot shall have this Lease during the  
life of the Lessee, which was the Abbot. 5 H. 7.  
Abbot 6.

*Pafton* saith, That an Abbot may have Goods, and no right in the  
House, as a gift of Goods to an Abbot and to a Stranger, they be joynt  
Tenants, and the House hath no right therein.

*Arden* saith, If an Obligation be made to an Abbot onely, and after-  
wards



wards he is made a Bishop, his Successor shall have the Obligation: So also if he had recovered damage for Battery done unto him, and before execution he is chosen Abbot of another place, his Successor shall have a *Scire facias*; and so he shall answer the Issues lost by his Predecessor, *per Pole, 22 H. 6. f. 4. Debt 46.*

**I I.** *Where a Lease made by an Abbot, Bishop, or Parson, without the Covent, Chapter, or Patron, shall bind the Successor, and where the agreement after shall make it good, and what shall be sayd to be a sufficient Agreement.*

**I**F the Successor accept the Rent reserved upon the Lease, made by the Abbot or Pryor alone without the Covent, he shall never avoyd it, *37 H. 6. fol. 4. Abbe 2. 4 Ed. 3. 14. Vide 15 Ed. 4. 17.*

Note, That the Grant of the Abbot alone of an Advowson by him made, is determined by his death, and cannot be made good but by agreement with the Successor: Otherwise it is of a Lease for yeares of Land, which may passe by word, *21 Ed. 4. fol. 5. Abbe 5. Vide 11 H. 4. fol. 17.* That the Agreement is a new Lease.

Note, If a Parson make a Lease for life and dye, &c. and the Successor accept fealty, he shall never avoyd the Lease during his life, *Juris utrum, 3 P. 11 Ed. 3. Abbe 9.*

A Lease of a Bishop is good by confirmation afterwards of the Chapter, upon issue, if the Bishop were dead before the Confirmation, *31 Ed. 3. Abbe 10.*

Prebend doth Lease his services to the Ter-tenant for yeares, this is good; and the agreement of the Successor, that such Termor may hold over, &c. is a good new Lease; and if another were Tenant, he ought to have a new Attorneyment, *11 H. 4. fol. 17.*

**I I I.** *Where the Abbot or Prior shall prejudice the House by his owne act.*

**N**Ote, That an Abbot or Pryor shall binde his Successor by his owne Deed which is of Record; as if he confesse the Deed in a Writ of Annuity brought against him, *7 Ed. 4. fol. 12. Abbe 3. Vide 34 Assise P. 7. Corone 81.*

So if he confesse a Deed in action against him, *20 H. 6. Abbe 22. in Debt.* So of a Recognizance, although the thing come not to the use of the House, &c. For to no matter of Record the Covent cannot be party, *M. 14. t. d. 4. Abbe 4. and 16 Ed. 3. Abbe 8. & 13.* where it is also agreed,



agreed, That a Fine and every agreement upon Record is executory against the Successor, and of Recognizances agreed 8. E. 3. fol. 24., but there the Recognizance of a Priorefs was refused by *Herle*, because the Court did not know that she was Priorefs.

Confession of a Deed, or of an action in the predecessor bindes the Successor, 34. *A/s. P. 7.* Otherwise it is in matter in fact, when it is not to the use of the house. And for that the Successor was not bound by the Obligation of his predecessor, made when all the Covent was dead of the plague--8. H. 5. fol. 10. *Abbe 28.* Seisin of divers services encroached upon an Abbot shall not binde his Successor, *M. 4. Ed. 2. Avowry 204.*

Note. The Successor shall be bound by Covenant of an Indenture made by his predecessor alone in defeazance of an Obligation made by him alone, 47 3 *Ed. fol. 23. Barr. 221.*

Debt against the Abbot of *Fountaines* upon the Deed of *F.* his predecessor, and the Covent, where in fact the said *F.* was chosen by ten Monks, and the Def. by twenty two, their foundation being that he was a perfect Abbot by Election without other institution, &c. but of their Visitor, by which Institution *F.* did enter, and with the assent of the Covent he made the Deed. And it was held void, because he was not Abbot, but the Defendant was. As if a Parson enter without *Institution or Induction*, his Deed shall be void, notwithstanding the confirmation of the Patron afterwards. But the Grant of an Abbot which is degraded after, or depofed for any thing done before that he was Abbot, continueth good, 9. H. 6. fol. 32. *Debt. 29.* So if he give over, or resigne, as 29. *Ed. 3. 16.*

A man sent an Abbot 20. l. for the use of the House, and the Abbot alone was bound by Obligation for the payment, and dieth. Now the Contract is determined by the Opinion of *Newton* Judge, and he shall have no remedy against the Successor; but *Ascue* saith, that it is not determined, because the Contract bindes the House, and the Bond the Abbot only, and so shall have good remedy against the Successor, if he declare upon the Contract, and not alledge the Obligation, 20. H. 6. fol. 21. *Debt. 41.*

So ye see the Contract of the Abbot without Deed bindes the House, when it comes to the use of the house, and this shall be averred as well, as when he made an Obligation for the payment, as it was agreed, 20. H. 6. fol. 45. *Debt. 40.* where the former Abbot made an Obligation of payment for Victuall, bought to the use of the House, and all this did not make the Count to be double, for the Contract is but the conveyance to the Action.

An action of debt brought against the Successor for 10. l. lent, which came to the use of the House: *Newton* saith, that the better pleading is to alledge this generally, and not how in particular they came to the use of the House, and saith, if they were spent in an action of Battery brought against the Abbot, this is a good use, because the House shall be charged with the damage 22. H. 6. fol. 36. *Debt. 30.* It is fit to shew where they came to the use of the House, 2. *Ed. 4. fol. 14.*

In debt against a Successor, declares upon an Indenture of the Predecessor, which recites how he was in debt to the Plaintiffe, upon account in 100 s. which came to the use of the House; and by this his Deed acknowledged to be bound in 100 s. and the Count was held good, not double: For it behoved him of necessity to averr the coming to the use of the House, and upon that had issue. *M.2.Ed.4.fol.14.Debt.70.*

An Abbot and a Parson had debate concerning Tithes, and referred themselves to the arbitrement of a Deane, who did Order that the Abbot shall have the Tithes, and shall pay the Parson and his Successors such an Annuity; and although that the Patron and Ordinary were no parties, yet it was held to be good; and that the Successors of the Abbot shall be charged with the annuity, and it seemeth, because they had *Quid pro quo*. *M.11.H.4.fol.4. Entre 36.& 11.H.4.fol.68.Scire facias.71.*

- Note, If a Prior Donatiue removeable, which hath no Covent or common Seale; not is not impleadable, leavies a Fine of Land or Rent, the Successor shall be concluded hereby in all respects. By all the Justices. *M.2.Ri.3.fol.5.Eskoppell.82.*

Release of an Abbot to him that had committed waste, doth not barr his Successor from his action; but satisfaction with an acquittance will. *42.Ed.3.22.Waste.72.*

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*IV. Where, and by what words in a Deed the Abbot shall binde the Successor and the Covent, and where the Date is materiall.*

**D**ebt against an Abbot upon the Deed of his Predecessor, which was, That s. the predecessor, with the assent of his predecessor and his Covent, had bound himselfe, and the date was out of the County where the Abby was; and it was agreed, that the Deed was not good against the Successor. *H.14.Ed.3.Abbe.11.*

But see 14 *H.6.fol.16.Debt.35.* That the date elsewhere is not materiall, for it may be the Deed was delivered there, &c. Also if the Deed be, In witness whereof I have with the assent of the Covent put the Seale of the Covent, this shall binde the Successor.

And it is enough to say, In witness whereof we have put our Seale, without saying *common*; for if the Abbot and Covent Seale a Deed with my Seale, this shall binde them, which was granted; and the Covent Seale will not binde the Successor, without the consent of the Covent. See 22 *H.6.fol.4.Debt.46.* And see 18 *Ed.2.Debt.147.* That in debt upon such Deed against the Successor, he shall not aver that this is not the Covent Seale, but shall answer, whether their Deed, or not.

The Successor shall not be bound by a Deed sealed with the Covent Seal by the Covent, if they forced to do it by compulsion, as Imprisonment, &c. where not acknowledging this which they have done, and that it is not the act of the Covent, shall be a good Plea: So also the Deed shall be



be well avoided, by alledging that the Abbot imprisoned the Covent, &c. and not that he imprisoned *A.B.C.D.* which made the Covent, &c. per *Coke, 38 H.6. fol. 27. Dures 2.*

Debt against an Abbot alien upon a Deed of the same Abbot and Covent; and the Justices were cleer of opinion the Action would not lye here, for that the Deed bore date in *England*, and the Abbot was out of the Realm; so that it could not be intended that the Covent did know of it, *Tr. 13 Ed. 3. Abbe 12.*

Debt against an Abbot and Covent upon the Deed of the Predecessor and Covent, and challenged because it was dated before such time as the Abbot had the Common Seal, and it was not allowed: But the issue was, whether it were the Deed of the Abbot and Covent, *Hillar. 20 Ed. 3. Abbe 14.*

Note, where a Deed beareth date in the Chapter house, it shall be intended where the house is, and not elsewhere; otherwise it is of a date in another certain place, where the Chapter house is not mentioned, for it may well be there, *9 Ed. 4. fol. 39.*

Debt against an Abbot upon the Deed of the Sub-prior, Officers and Monks, in the time of the Vacancy, reciting that the money came to the use of the house, binding them and him that should be their Abbot, and it was good, *7 E. 3. fol. 35. Abbe 16.*

*V. Where a Monk of a House, or other shall bind the Abbot and the Successor by Obligation and Contract, and whether a Prior, donative and removable shall bind the Abbot.*

**T**He Abbot shall be charged by Contract made by an Officer of the house, to the use of the house, *25 Ed. 3. fol. 12. Abbe 19.*

So by such Contract of any Monk, by *Fortescue 22 H. 6. fol. 4.* and this shall bind the Successor, although he which made the Contract was not a Monk at that time, but shall answer whether it came to the use of the house, *22 Ed. 3. fol. 8. Abbe 15.*

So of such Contracts made by Monks in the time of the Vacancy, *7 Ed. 3. fol. 35. Abbe 16.*

In Detinue, shews that he delivered Writings to a Monk, with the assent of the then Abbot, against the present Abbot and the same Monk, they were at issue upon the Bailment, *M. 3. Ed. 3. fol. 46. Abbe 18.*

In Debt against an Abbot, and D. his Com-monk of C. for letting go at large one who was condemned in the Court of D. Prior Donative of A. where he had to do, and the Writ abated for naming D. but otherwise it shall be of a Contract made before entry into Religion, *P. 45. Ed. 3. fol. 9. Debt 130.*

In Debt against the Master of a house upon the Deed of the Predecessor, with



with this, that the thing came to the use of the house. *Sadler*. At the time of the making of the Deed, there was neither Master, Covent, nor Common Seal, nor any Lay Brother of the house, and he who made it was not Master, but Deputy of the Bishoprick, and the opinion of *Wilby* and *Stouf* was, that he might well demur upon the Deed, yet the issue was, whether it came to the use of the house 25 *Ed. 3. fol. 12. Det. 141. 26 Ed. 3. fol. 1.*

In Debt against an Abbot and Com-monk, upon an Obligation made by the Com-monk before he entred into Religion, and the common opinion of the Court was, that it did not lye, because there came therby no benefit to the house, *H. 13. H. 4. Debt 167.*

Note, an Abbot was charged by Deed of his fellow Monk, for Wooll bought, with averment, that it came to the use of the house, as if it shall be a Contract of my Servant, for a thing which cometh to my use, 4 *Ed. 2. Debt 168.*

In Debt against an Abbot upon the Deed of T. his Predecessor and the Covent, it shall be a good answer to say, that the said T. was not Abbot at the time, but F. or H. 10 *Ed. 3. fol. 11. Debt 15. see 9 H. 6. fol. 32. Debt 29.*

See, that a Fine levied by a Pryor donative, who had no Common Seal, doth bind the Successor, *M. 2. M. 3. fol. 5. Estoppel 82. Trin. 11 H. 4. fol. 68.*

A Confession of a Sub-pryor in the time of Vacancy shall bind the house, 9 *Ed. 3. fol. 16. Quare impedit 30.*

*Thirning* saith, that the Pryor which hath a Covent and Common Seal, may well charge the house, without having *Quid pro quo*; And our Masters have adjudged a Grant not effectually to himself, in Law to be of good effect, where the house had *Quid pro quo*, 11 *A. 4. fol. 68. Scire facias, 71 & 12 H. 4. fol. 11. Scire facias 73.* and see *M. 16. Ed. 3. Annuity 24.* That a person alone shall bind the Successor having *Quid pro quo*, &c. Tithes for an Annuity.

VI. *How an Abbot shall be made, and who may be made an Abbot and who shall be said Abbot to bind his Successor, &c.*

**A**N Abbot shall be made by election of the Monks, and the Institution of an Ordinary, or their Visitor, as the Abbot of *Fountaines*, and he that hath most Voices shall be Abbot, and every thing done by him who was in election, and elected by the less number of Voices, is void, though he were instituted by the said Visitor. 9 *H. 6. fol. 32. Debt 29.*

A Lay-man cannot be an Abbot, but if he be chosen (saith *Green*) he shall be holden for Abbot against every man, untill such election be reversed: And *Hill* saith, that he shall answer to every man as Abbot, but if he be to use an Action as Abbot, perhaps it may fail, *Trin. 20. Ed. 2. Conjurans 46.*

Note,

Note, a secular Clerk shall not be chosen Pryor, but he ought to be Regular, &c. H. 11. Ed. 3. *Quare impedit* 157, and see there that the Founder presented to the Pryory without election.

VII. *Where an Abbot, or Pryor, or Bishop shall be bound by his Deed, which he made when he was a Monk, or Abbot, or Pryor of another place.*

IN account against the Abbot of S. by Executors, for the time that he was Bayliff of the Mannor of their Testator, where in truth the Defendant was a Monk, and not Abbot at that time, yet the Action lyeth H. 20. Ed. 3. *Accompt* 78. where the Abbot and Covent are bound, and the Abbot is made a Bishop, now he is discharged for that time in which he was neither Pryor nor Bishop, and the new Abbot and Covent shall be charged, M. 22. H. 6. fol. 4. *Debt* 46.

But if he were bound alone without the Covent, and afterwards he be made Bishop, now he shall be charged notwithstanding that same time, and the house discharged: And Bryan saith, that when the Sovereign is translated from one Abbey to another, there is no mean time P. 5. H. 7. fol. 24. And note, that a man shall not avoid his Deed when he was Abbot at the time of the Deed made, and Abbot at the time of the Suit, though of another place, because at every time he is a person able to be sued, *Debt* 102. & 3 H. 7. fol. 11. but in both these cases the Abbot was translated from one house to another; and *quare*, whether there be any diversity between such translation, and the creation and translation of a Bishop.

VIII. *Whether the Successor shall have any thing where an Obligation is made to his Predecessor.*

IF an Obligation be made to an Abbot alone, the Successor shall have it, although he be not dead but translated; the same Law is where he shall recover damage for Battery done unto him, and before execution he is Abbot of another place, the Successor shall have *Scire facias*, 22 H. 6. fol. 4. *Debt* 46. See such matters 5 H. 7. fol. 25. And of the Obligation agreeth, 47 Ed. 3. fol. 23. *Debt* 134.

IX. *Where*



IX. Where the Abbot and his Com-monk shall be charged, and where the Abbot charged for the debt of the Monk, and where the Sub-prior or Monk shall be sued alone without the Sovereigne.

**I**N debt against an Abbot and Prior *Donative* upon the escape of a Prisoner, who was condemned in the Faire of the Prior. The Writ abated for naming the Prior. 45 *Ed.3. fol.9. Debt.130.*

In debt against an Abbot and Com-monk, upon an Obligation of the Monk made before his entry into Religion, abated by the Opinion of the Court, for that no benefit came to the House thereby. *H.13. H.4. Debt.167. vid. P.9. E.2. Debt.171.*

In detinue against an Abbot and Com-monk for corne delivered to the Monk to be re-delivered; and the Declaration was naught, by which was alledged the delivery to the Monk to deliver to the Abbot, upon condition that he should have it againe upon demand made, or otherwise the Abbot should detaine it, &c. and the Writ abated for naming the Monk. *Tr.2 H.4. fol.21. Detinue.34.*

The same Law is of a contract made by an Abbot and a Monk of money lent to them, and the contract was made by the Monk, being an Officer of the House; for the action shall lie against the Abbot alone, otherwise it shall abate: but in Trespass the Monk shall be named, because he is to be imprisoned. *H.33. Ed.3. Brief.913. See 45, Ed.3. fol.9.*

Waste against the Abbot and B. his Chanon as Guardians is good, with averment, that the Chanon was such Prior, and that the Guardianship was to them in common, or to the Prior alone who made the waste, and now is Chanon, &c. For then the Abbot shall be charged, because of his body, when he was sole Guardian, &c. during his life and not after. And *Kirton* saith, That for that part which belonged to the Prior, now Chanon, the action shall be against his Successor. And note, That this Writ lieth not but where they were joynttenants, and made the waste, when the Chanon was Prior, &c. 49. *Ed.3. fol.25. Waste.95.*

See there; If an Abbot Guardian make waste and is deposed, the action shall lie against the Successor, not, if he die. In like manner the Abbot shall be charged with waste done by his Monk, which the Successor shall not be. Likewise an Abbot shall be charged with Trespass done by his Monk while he lives, but not after his death, for the Monk shall be named in the action, not in the waste. 49. *Ed.3. fol.25.*

In a *Quare impedit*, brought by a Patron of a Priory in the vacancy against the Subprior and the Covent, and recovered upon their knowledge of a Coven between their predecessors and the Plaintiffs Ancestors, upon which the presentment to the Churches void during the vacancy should be reserved to the Ancestors of the plaintiffe and his heires. *P.9. Ed.3. fol.16. Quare impedit.30.*

See

See such like Writ maintained, *H.11. Ed.3. Quare impedit* upon a Presentation to a Pryory, without any election of the Founder.

X. *Whether a Writ shall be sued forth against a Monk, and where a Monk shall sue forth a Writ without his Soueraigne, and where a Frier or Prior of Friars.*

**A** Monk shall not be named in debt, detinue, or waste, &c. but in Trespass, and such cases where his body is to be imprisoned for the King. See the division next before *cap.2.* and where the Abbot shall not be charged by his body for any thing by him done before his entry into Religion. *5 H.7.fol.25. 45 Ed.3.fol.9. 4 Ed.2. Debt 168. 13.H.4. Debt 167. 9 Ed.2. Debt 171. 2 H.4. fol 21.33 Ed.3.Writ 913.*

Debt upon an obligation against *R.B.* Prior of the Friars Carmelites of *L.T.* his Con-fryer, and others, and the Writ was good if he were the Pryor of the Friars of the same place, the day of the purchase of the Writ, and he plead this matter to the Writ. *H.3 H.6. Debt 20.*

The Guardian of the Friars Minors of *L.* brought an action of Trespass for taking away his servant and clothes, the action good; the other justifies the reprisall from his Son taken away within age, and not professed, and *M.11.H.4.fol.31. Baron 179.*

*Premunire* for the Abbot of *D.* against *I. S.* late Monk of the same place, and the addition was held not to be good; and that (late) ought not to be put to the mystery of a man, but this ought to be alledged directly in fact. *P.9 Ed.4.fol.2. Writ 169.*

*Quare impedit* for the King against a Bishop, and *I. S.* his Com-monk, and it was good, because the Monk had been Prior of the same Church, &c. for it is to destroy the name Prior, otherwise he ought to have named his Soueraigne. *14 H.4.fol.36. Write 496.*

Trespass lieth not against a Monk, and others without naming the Soueraigne of the Monk *M.9. En.2. Write 840.*

False imprisonment against the Abbot and Covent, the Writ is good, and the Abbot shall have Conusance, *M.18. Ed.3. Conus.39.*

Note, That in case of felony, the Monk shall be sued without his Soueraigne, and shall answer without him, *29 H.6. Coron.17.*

Appeale against *I.* Abbot of the Monastery of *M.* and &c. *I. H.* Canon of the Monastery of *M.* This word (*Canon*) is void, because it is not alledged what Canon it is, but Process shall be made against *I. H.* and the issue shall be, whether there be no such *I. H.* and not whether no such *I. H.* Canon, for that is void *6 H.7.7.7. Corone 64.*

Trespass against an Abbot and his Com-monk is good, and their plea shall be joynt, but the Record shall be entred severally, so that every Monk may plead for himselfe severally without the Abbot, *M.38. Ed.3.fol.25. Damages 63.*



*Abbot.*

An account against a Prior of a receipt of his Com-monk before he entered into Religion, the Prior shall have his Law, 2 H. 5. fol. 3. Ley 67.

*Scire facias* against the Fryers *Carmelites* to repeale a Patent of the King made in his prejudice, and of the Plaintiff M. 17. Ed. 3. fol. 59. *Petition* 21.

A Writ shall not be maintained against a Prior without naming the Abbot, although he had a severall possession ———— so, although his Land were so given, that the Abbot shall not take the profits. 14. H. 4. fol. 10.

The Plaintiff shall not be disabled, because he is a Monk professed in *Normandy*, 12 H. 4. 16.

Account by the Abbot and brethren was abated, the brother was named, 7. R. 2. *Non habilit*. 3.

**XI.** *Where an Abbot or Pryor, or Bishop, shall not alien by the assent of their Covent, and where they shall, and where the alienation shall be discontinued, without the assent of the Covent, and where the assent of parcell is not good.*

**I**F a Pryor, who is a Prebend of a Cathedrall Church, doth alien parcell of his Prebendary, by the assent of the Covent, yet this is not good without the assent also of the Bishop and Chapter, nor *e contra*, &c. P. 17. Ed 3. fol. 29. Brief 666.

An Abbot brought a Writ of *Terminum qui prateriit*, of that which was his right of his Church of *N.* appropriate to the House, which he had as Abbot of a Lease of his Predecessor, and because that the right which he hath thereto as Parson of *N.* and for the Parson there lieth no action but *Juris utrum*, the Writ was abated, T. 20 Ed. 3. *Juris utrum* 5.

The Bishop of *Coventry* and *Lichfield* granted *Estovers*, with the Confirmation of the Pryor and Covent of *Coventry*, where he was also chosen, and to be chosen by them, and also by the Deane and Chapter of *Lichfield*, for which cause the Grant was held insufficient without their assent, Temp. K. 2 Grant 104.

**XII.** *Whether a Bishop, or other Spirituall person a disseisor shall be said to be seised to him and his Successors, and where to him and his heirs.*

**H**Erle saith, where a Bishop Lessee for years, makes a Lease for life to a stranger, this is a disseisin to the Lessor, and the Reversion is in the Bishop and his Successors, H. 7. Ed. 3. fol. 11. *Issue* 7.

By Usurpation to a Church made by a Bishop, the Patronage is gained to the See, &c. 47 Ed. 3. fol. 10. *Quare impedit* 141.

XIII. Whether a Com-monk shall bring an action against the Abbot, or the Charter against the Deane, and a Monk shall be a person able to sue for severall possessions.

**N**Ote, The Chapter and every Prebend shall have an action by themselves for every distinct right, and the Chapter against the Deane himselfe; but if the Deane joyne with the Chapter to the presentation of Church which is of the right of the Chapter, this shall be understood that he did it as Deane, and the Chapter shall not have a *Quare impedit* against another Deane of that Church, 9 Ed. 3. 18. Writ 460.

Monk as Farmer to the King, shall not have his action of Trespass, but by *Quominus* in the Exchequer, 2 H. 4. fol. 7. *Non hab.* 18.

A Monk Lessee of the King of Lands, the Pryor doth alien in time of warre. If the King grant the lands to another before this time, he shall have a *Scire fac.* to repeale this Patent (granted) but the King cannot enable a dead person to sue and purchase, per Hanc & Thirning, M. 14. H. 4. fol. 10. *Non hab.* 21.

A Monk as Vicar of D. prescribes to sue and to be sued, and this in a debt upon an obligation, 3 H. 6. fol. 23. *Non hab.* 1. But it is cleere that such Vicar shall be answered for all things concerning his Vicarage, otherwise not without his Sovereigne, for he is discharged of obedience, not of his profession, 44 Ed. 3. fol. 4. *Non hab.* 23.

The Pryor of W. brought a *Quare impedit* against the Abbot of W. And although he were under his Obedience, &c, yet the action was maintained, for that he had his possession severall, and was Pryor by Election, and not removeable by the Abbot, yet it was agreed, that the frank Tenement of such severall possession is in the Abbot, and a stranger shall have an assise or other action against him without naming the Abbot, M. 20 Ed. 3. *Non hab.* 9. So 14 H. 4. fol. 10 in *Non hab. divis.* 5. cap. 1.

XIV. Where Bishop, which shall be, shall be vouched.

**I**N a Writ of Entry, the Tenant alledged against in Taile to his Father by one M. Bishop of R. and that the See was void, and the Temporalities in the hands of the King and Archbishop, and voucheth him who shall be Bishop, and it seemeth that he shall have the Voucher, although that no Summons shall be upon the possession of the King: As Voucher of an



Infant in its Mothers belly, is good, yet if he hath no other heire, no processe shall be awarded, *M.38 Ed. 3. fol. 29, Vouch 58.* but see there, that the Tenant alledged that which T. was made Bishop, but the Temporalities were not yet restored, for which cause the Voucher granted, and the Plea was stopped untill the King did declare his will, for the Summons shall not be but in the Demesne Lands of the Bishop, because none other shall be rendred in value, *38 Ed. 3. 29.*

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*XV. Whether the Successor of an Abbot or Pryor shall be charged for the offence and trespassse of his Predecessor.*

**W**Ast against an Abbot as Guardian, the Abbot said that his Predecessor was seised of the Ward and died, after whose death no Wast was made. *Finch*, it is not reason that the Wast of the Predecessor should be unpunished, yet the Plaintiff durst not demur, but said, that he had done Wast after his death, *&c. 43 Ed. 3. fol. 8. Wast 78. See 49 Ed. 3. fol. 25.* where the Successor shall not be charged with such Wast.

Note, the Successor of an Abbot shall not be punished for the offence of his Predecessor for not scouring of a Ditch, unlesse that the pain were assessed in his life-time *Per Curiam, M. 8 H. 7. fol. 3. Bar 140.* but the Successor shall plead in excuse of his own time, that the presentment was not upon him.

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*XVI. What person shall be said to be Founder of an Abbey or Priory, and where he shall have the Temporalities during the vacancy.*

**T**He Pryor of *Plympton*, to prove the Bishop of *Exeter* to be Patron, alledged a Charter of the Progenitor of the King to the Bishop, that the Pryor and Covent might transfer and hold the Church of *Pl.* And by another Charter he granted two Hides of Land to the Cannons, whom the Bishop of *Exeter* had there placed, *&c.* yet because it did not appear expressly that the Patronage was in the Bishop before the Grant, nor expressed by the Grant; and it being also alledged that the Progenitors of the King had founded a Chappell there, before any Priory was there; and the first Grant is to transfer the Seculers into Regulars, the King was held to be the Patron, because he was the first Founder: notwithstanding that the Bishops have been (as Patrons) from the time out of mind, and had had the Temporalities in the vacancy. It was also there said, that although there was never there any Pryor before, and although that the Priory was not founded in the same place where the Chappell was, yet for that

it

it was annexed to the Chappell, which was the first Patronage of the King, that the King shall be adjudged Patron, and so he was here, 38. Aff. P. 21.

Grant 1.

The Patron of a Priory had a *Quare impedit* against the Sub-prior and Covent in the vacancy of a Church annexed to a Priory, void in the vacancy, 9 Ed. 3 fol. 16. *Quare impedit* 30.

Note, the King shall be said to be Patron when the first possession of the Abbey is of his gift, or the greater part: And if he and others founded together, the King shall be preferred, &c. 44 Ed. 3 fol. 24.

Note here, these said Cases make the King Patron, although the Abbey consisted in Land given by another, unless it can expressly be shewn that the house was of his foundation, and that be proved.

## XVII. Pryor Alien, and seisure of his Lands by reason of the War.

**A** *Formedon* against a Pryor alien, the Plea shall be put without day, the Land being seised for War, although demised to his Tenant, yet in an Annuity he shall answer, but not in an Assise of Rent, T. 13 Ed. 3. Brit. 264.

And the opinion was there, that the Free-hold was in the King by such Seisure; But *Shard* said, there was no doubt but the Free-hold was not in the King, but that he had the Land in name of distress only, and alledged a Judgment, that such Pryor Lessee shall bear all manner of charges H. 17. Ed. 3 fol. 2. *Scire fac.* 7.

And 13 H. 4. fol. 13. *Hank* alledged a Judgment, wherein a Writ of Right against a Pryor alien, such Farmor shall have aide of the King for the ancient grant of his Progenitor.

See more of this 46 Ed. 3 fol. 6. Forasmuch as the King had nothing but the possession for the time, Pryor alien in a *Quare impedit* declared upon the presentation of his Predecessor and of the King seised for the cause of War, and it was good. So the Presentation of the King by such Seisin in right of the Pryor, is good. 40 Ed. 3 fol. 10. *double Plea* 72.

Pryor Alien charged for the Farm of the Pryor leased to him in the time of the War, had processe against others, surmising that they had parcell of the Goods, &c. without which they had not wherewith to pay, 38 Aff. P. 20 *7. r. s. d. f. i. o. n.* 32.

The King seiseth for Lands of a Pryor Alien, the Lands of that Pryor who was born in *Gascony* within his alleageance, he shall have generall restitution, and by such restitution an Advowson passed without special words of Advowson, because the Seisure was by wrong 27 Aff. P. 48. *Livery* 9 but otherwise it is in a Grant.

A Monk as Farmor to the King of a Mannor seised in the Kings hands by reason of war, alledged that the Plaint. in the replevin brought against him was



## Ability and Non-ability.

was Villain Regardant to the Mannor, and hereupon issue was joyned, *M. 20 Ed. 3. Villain 10.* Where the Monk was a Com-monk of an Abbey in *Normandy.*



## Ability and Non-ability.

*I. Where a Pryor donative and removable shall sue and be sued without his Sovereign.*

**U**Pon a Writ brought by a Pryor, the Defendant saith, That the Plaintiff was a Monk professed under &c. The Pryor saith, That he and his Predecessors have sued and been sued, and have answered, and have been answered time out of mind &c. and it was held a good Plea, and rehearſes divers ſuch Pryors, although they were removable at will &c. *M. 12 Ed. 4. fol. 17. Non-ability 16 39 Ed. 3. fol. 24. Non-ability 22.* agreed, and the Pryor ſhall ſet forth the matter to enable him.

Land is given to an Abbot, Pryor, and Covent of W. Provided, that the Pryor and Covent ſhall take the Profits, and the Abbot ſhall not meddle therewith: This matter was pleaded upon a Writ of Aſſiſe of the Rent of this Land brought againſt the Abbot alone; and ſaid moreover, that the Pryor hath his poſſeſſion ſeverall from the Abbot, yet the Writ was adjudged good, and the Abbot alone ſhall answer *14 H. 4. fol. 10. Non-ability 21.*

See there, that a Monk as Farmer to the King ſhall be answered for any thing touching his Farm, but the King cannot inable him to take the Freehold, *ibidem.*

Debt againſt an Abbot, and C. Com-monk, that he was Pryor donative of D. where he had to do, and ſuffered an eſcape &c, and the Writ abated for naming the Pryor; But for his Contract made before he entred into Religion, he ſhall be named; *45 Ed. 3. fol. 9. Non-ability 25.*

[Raviſhment of a Ward brought againſt the Pryoreſs of B. who ſaid, that every Pryoreſſe there is made by the Pryor of St. John, who is Commander there, and was to be obedient unto him, and removeable at his will: Sc the Writ ſhould be againſt the Pryor &c. and becauſe it was not, it abated, although that the Pryoreſs was impleaded, and impleadable time out of mind &c. and had a Covent and Common Seal, and their Poſſeſſions ſeverall &c. *P. 12. R. 2. Non-ability 4.*

A *Scire facias* brought by the Pryor of H. upon a Recovery of his Predeceſſor

deceffor had againft the Predeceffor of the defendant, Parfon of C. in an Annuity; the Parfon faid, that the Pryor is a Monk professed, under the obedience of the Abbot of S. removeable, and praied Judgement, whether he fhould answer, and compelled to answer thereto, notwithstanding the admittance of his Predeceffor. Also it seemeth the first recovery was well avoided by this plea: 34 H.6.fol.2. *Scire fac.* 39.

A Fine of a Pryor Donative removeable and not impleadable, and which had not the Covent Seale, shall binde his Successors for ever, 2 Ri.3. fol.5. *Estoppel* 82.

He shall not maintaine an action, because that he is made Vicar of D. and out of obedience, for it is the profession which disables him, and not the obedience, but he shall say over, that the Vicars there have impleaded and been impleaded &c. 3 H.6.fol: 23. *Debt* 14. And see there, as to things spirituall, a Monk shall be enabled by his Sovereigne and Ordinary, but in things temporall not without the Pope &c.

The Pryor of B. brought an action of Trespafs against the Abbot of C. who saith, That the Plaintiffe is under his obedience &c. The Plaintiffe saith, that it is perpetuall, and hath a Covent and common Seale &c. and because that the Plaintiffe is his Sovereigne, they were at issue if removeable &c. and this to be tried by the Bishop, 2 H.4.fol: 24. *Triall* 35.

II. *Whether a Monk, or such dead person shall be able to sue in his name only by the Popes Bulls, without the assent of the King, or by the Patent of the King only.*

**I**N Trespafs by him that was a Monke professed, he pleaded that the Pope by his Bulls had given him licence to take a Benefice &c. and alledged that he is Parson of D. by reason of the Bulls; and it was adjudged that he shall be answered; but it was said, that the defendant shall be received to say, that the suggestion of the Bulls was false, and so the Bulls void, and he said, that yet could not he purchase to him and his heirs: &c. P.26. H.6. *Nonhability* 13.

A Monk Farmer of an Abby during the Warre, brought an action of Trespafs, and the Writ abated, because he was not named Farmer in the Writ; also the opinion was, that the action did not lie here, but he shall have a *Quo minus* in the Exchequer for debt and Trespafs &c. 2 H.4.fol: 7. *Nonhability* 18. and with this agrees, that he shall haue a *Quo minus*, 8 H.5.fol: 6. *Nonhability* 29. and 7 Ed:4 fol.28. and 14.H.4.fol 10. *Nonhab.* 21. *Scire fac.* alledged a Judgement, where a Monk such a Farmer, who had a *Scire fac.* against him, who had the later Patent from the King of the same Farme to repeale it: *Hunk*, it may well be, but the King cannot enable him to have the Freehold, nor to sue for the Freehold, *Nonhability* 21.

III. *whether*



**II 1.** *Whether a Monk and dead person being Vicar or Parson shall sue and be sued alone without his Sovereigne.*

**T**He Vicar of *C.* brought an *Quare impedit* against *E.* and declared, that he made him a Grant to present to the Church of *H.* The defendant said, that he is a Monk professed &c. The Plaintiffe alledged, that he was presented by the Pryor of *W.* who is Parson and Patron — of the Church of *C.* and that the Vicars there have been perpetuall and not removeable, time out of mind &c. and have been impleaded, and have impleaded others &c. and that the Pryors of *W.* have made the Vicars of their Canons time out of mind &c. *Thorpe*, This action is not of a Church annexed to his Vicarage, by which he shall not be answered: And the Court said, that he is discharged of his obedience, not of his profession. *Finch*, it is cleer, that he shall have his Action for all things concerning his Vicarage, and which may be profitable to his Vicarage, and an Action for a term purchased by him: And this Presentation is but a Chattell, by which if he had been made Bishop, he should not have had Action of a thing not touching his Bishopprick without his Sovereign, and it was not adjourned *H: 44 Ed: 3. fol: 4. Non-hability 23.*

See 3 *H: 6. fol: 26. Non-hability 1.* Where such a Vicar had an Action of Debt upon an Obligation made after he was Vicar, with averment that he, &c. have sued and been sued by such name time out of mind &c. and see there that the profession is the only cause of *Non-hability*, *Debt 14.* And note there *Pafton* said, that of things Spirituall, a Monk may be made an Abbot by his Sovereign and Ordinary without the Pope, but not of things temporall. *Martine*, this is a good distinction &c. 3 *H: 6. 23. Debt 14.* see 39 *Ed. 3. fol: 24.* That such a Monk shewed matter, proving him to be answerable.

**IV.** *Where an Abbot and Com-monk shall be sued, or shall sue joyntly.*

**D**Ebt against an Abbot and Pryor donative, upon an escape of a man condemned in the Faire, abated for naming the Pryor, although that the Faire was to him, because removable, 45 *Ed. 3. fol: 9. Non-hability 25.*

In an Assise of *Corody* against the Abbot of *W.* and the Pryor, the Pryor as Farmer to the King during the War, pleaded *Out of his Fee &c.* and the Writ was good 27 *Ass: 43 Ass: 255.*

In a Trespass of battery of a Monk brought by him & his Abbot *Ad dam-*

*num ipsorum*: (1.) to their damage, and the Writ good P. 13. Ed. 3. Writ 261. *Strange* said, that upon an Obligation made to a Monk before he entered into Religion, his Soueraigne and he shall have an action, which was denied 3 H. 6. fol. 23. *Nonhability*. And see there, it shall not be an *Estoppel* to say that the Plaintiff was profest, because he was bound to him by the name of Vicar &c.

V. *Where a Monk or Pryor shall have his action against his Soueraigne, and where not.*

**T**He Prior of *W.* brought a *Quare impedit* against the Abbot of *W.* and it was good, because his possession was severall, had by election, and not removeable by the Abbot 20 Ed. 3. *Nonhability* 9. See Abbot *Divis.* 13. cap. 5. But see 14 H. 4. fol. 10. *Nonhab.* 21. That yet he is to demand the land of the Pryor against the Abbot, for the Freehold belongs to him &c.

In Ravishment of Ward against the Pryorefs of *B.* she alledged, That the Pryor of *St. Johns* is Commander of the House, and that the Priorefs is at all times made by him, and obedient unto him, and removeable at his will &c. and the Writ abated, although the Plaintiff alledged that the Pryorefs used to make Leases for years, had a Convent and common Seale, and their possession severall &c. P. 12 R. 2. *Nonhab.* 4. And see 2 H. 4. fol. 124. *Triall* 35. In Trespafs by a Pryor against an Abbot, under whom his obedience was. The Pryor alledged that he was perpetuall, had a Convent and Common Seale, Institution, and Induction &c. And the issue was, whether he was removeable by the Abbot, and this tried by the Bishop *Triall* 35. Of an action for a Chapter against a Deane: See Abbot *Divis.* 13. cap. 9 Ed. 3. 18. *Brief* 460.

V I. *Where Nonhability shall be by taking the habit of a Religious person, without profession, and although profest shall bee avoided, and shall not bee disabled, and at what age, and by what he shall be professed.*

**N**ote, The Plaintiff shall never be disabled because the defendant alledged that he was professed in *Normandy*, or any where else beyond the Seas where it cannot be tried 12 H. 4. fol. 16. *Nonhab.* 2.

In an Affise by the husband and wife, the defendant said, that she had been a Nun thirty years &c. Now it was no plea for the husband, that she had left the Order by precontract, unless he had alledged the Contract be-



fore the taking of the Habite; for if she were affianced to him after this, yet she is a Nun by Barr, which *Herle* granted, although she were never professed in deed, yet if she did abide in the Order a year and day, she shall be held a Nun alwayes; upon which issue was taken, whether she had left the Order before that she took the Habit, and it was sent to be tried to the Bishop of the place *Tr. 5 Ed. 2. Nonhab. 29.* But the habite of a Monk is not materiall, if he be profest in deed &c, *M. 19. Ed. 2. Brief 840.*

Note, That an Infant of twelve years may well be profest, and it is no plea, that he was not profest by the Ordinary, for he may be profest by his Deputy, *M. 12 Ri. 3, Gard. 106.*

VII. Where the party shall alledge Nonhability of his own person, and how it shall be avoided, and where a Monk shall be sued without his Sovereigne.

**I**N Debt upon an Obligation, the defendant said, that he was a Monk professed &c. *Cl.* you are bound by name *Secular*, and you shall not disable your self. *Charl. and Rich. Justices said, You shall answer &c.* *M. 13 R. 2. Nonhability 34*

*Precept* brought against the Warden of an Hospitall, who saith, That he is profest under the Pryor of *Country*, and removeable at his will; The Plaintiff offers to aver that he is a person *Secular*, and not profest. *Shard*, we have nothing to do with his Profession, but answer to this which he saith, that he holds at will &c. P. 13 Ed. 3. *Nonhab. 7.*

In a *Quare Impedit* against a Sub-prior, he alledged that he was under obedience, and he could not have action, by which &c. *Hough*. Justice, yet he may disturbe, and against a Disturber a Writ lieth, by which he shall answer *Tr. 22 Ed. 1. Non hab. 27,*

See 12 H. 4. fol. 17. The defendant pleaded Profession in the plaintiff, he pleaded to enable himself in Affise, that at another time was brought against him by this defendant &c. *Estoppel* 104. See 34 H. 6. 42. fol. 2. of this.

In Trespasse againſt two, If the one ſaith, he is a Monk profeſt, if this be true, the whole ſhall abate *M. 19. Ed. 2. Writ 840.*

He which is Outlawed, shall not be put to answer to any action, although he be present at the Barr, no more then he shall be answered, 2 Ed. 4. fol. 1. *Render.* 54. *Stouf.* said he should be answered 15 Ed. 3. *Outlawry* 2. See there.

*where* had left the Order by precontract, unless he had alleged the Contract before a Nun thirty years &c. Now it was no plea for the husband, that there been a Nullity by the husband and wife; the defendant said, that she had found the fact where it cannot be tried 12 H. 4. fol. 107.

## Non-hability.

81

**VIII.** Where Nonhability of one of the Plaintiffs shall be of both, and where not, be it of the party Plaintiff or Defendant.

**U**Pon a *Cui invita* by two as heires, the defendant said, that one is a Canon profest &c. and for this, neither the one nor the other shall be answered, because they brought their action in Common 7 *H.4.fol.2. Nonhability. 19.*

So in action of Trespass brought by two, the one is challenged as Villaine, the defendant confessed it, the whole Write abated 22. *Ed.3.fol.18. Nonhab. 10.*

So in a *Quare impedit* against two, the one saith, That he is a Monk profest, and for this the whole shall abate 14 *H.4.fol.37.*

The same Law is in Trespass against two, the one being a Monk 14 *H.4.fol.22.* and *M.19 Ed.2 Writ 840.*

So in debt against an Abbot and Pryor donative his Com-monk 45 *Ed.3.fol.9. Nonhab.25.*

In an Assise by two husbands and their wives, the one husband and wife severed after apparance, the Tenant alledged the husband to be Alien born, yet the Writ was good *M.11.H.4.fol.26. Nonhab.20.*

Trespass brought against two, The one said, that the Plaintiff was his Villaine, and the other held himself to the same plea, whereby upon issue, if that he was free against them both *H.34.Ed.32. Nonhab.28.*

Taking of a husband by one Demandant after the *Darrein* continuance shall not abate the Writ, but for her part, because the Writ was well purchased, otherwise it is if the Writ had never been good in the whole: by *Shard 12 Ed.3.Writ 258. Fitch. See 32 Ed.3. after all abated.*

Upon a Writ of account is brought by two, one is Outlawed, the Writ shall abate in all *T.9 Ed.3.fol.22.Writ 461.*

Upon a *Dum fuit infra atatem* by two Parteners, the Release of the Ancestor was pleaded, whereby the one being within age, the plea was staied for all. And there *Finch* said, if one be Outlawed or Excommunicated all shall abate; but if it be for Felony, the other shall be answered *T.30 Ed.3.fol.7. Age 82. See 41 Ed.3.fol.7.*

In an action upon a Bond by a Monk and a Secular man, it seemeth all shall abate by joyning the Monk 3 *H.6.fol.23. Debt 14.*

**IX.** Where Nonhability shall be alledged for cause of Villainage, or because a Clerk Convict, or because an Alien born.

**V**illainage in the Plaintiff is no plea in Conspiracy brought for making void of the Record by which he was found a Villaine *P.42.Ed.3.fol.*

14. *Conspiracy 10.*



## Non-hability.

So if he who is at issue upon Non-villainage imprison me, so that I cannot come at the day, and I am found a Villaine; this Triall shall not bind me in false imprisonment brought against him 44 *Ed.3.fol.22.*

In Trespass for Battery in presence of the King, and of his Justices, it shall be no plea for the defendant to say, that the Plaintiff is his Villaine for now it is not lawfull to apprehend him in presence of the King 27 *Affise P.49. Villaine 18.* whereto agreeth 27 *Ed.3.fol.83.*

¶ He that is delivered to the Ordinary as a Clerk convict, and in that time is Outlawed, he shall not assign Error in the Outlawry, before he have made his purgation; but let the Deane see the same well done *sede vacante*, and in the absence of the Deane and Chapter; & *T.13. Outlawry 2.* And see there, *Thorpe* saith, that being in the Bishops Prison, he shall be received to every ancient action, and shall be vouched, and his heire shall have the Writ of *Mort de Ancestor* of his seisin *Outlawry 2. Stonse* said, he shall not be answered against another, but if he shall answer, it is not material *ibidem.*

In a *Precipe*, the Tenant voucheth him that was in the Bishops Prison, as attaint of Felony; and although he may make his purgation &c. yet he shall not have the Voucher by the Opinion, because he is now out of the Law, and the Court shall respect the time present, and now he cannot be summoned, nor Execution had against him, as a man shall not vouch a man Outlawed, yet he may be restored to the Law, and 8 *Ed.2. Item Canc. Voucher 137.*

A Merchant Stranger shall not sue for his goods at the Common Law, but in the Chancery he may well by their Law; and he shall sue a Denizen before the Councell; but a Denizen shall not sue him there &c. 13 *Ed.4. fol.9. Denizen 2.* and see there by what Statutes he shall be bounden.

**X. Where Nonhability by Outlawry shall be alledged, and how this Nonhability shall be avoided and defeated by plea or otherwise.**

**I**N Trespass the Defendant said that the Plaintiff is Outlawed at the suit of *D.* by the name of *I.S. of D.* The Plaintiff saith, that at the time &c. he was dwelling at *S.* without that &c. and this was held a good plea, because it cannot be intended to be the same person 10 *Ed.4.fol.13. Nonhab. 14. 38 H.6.fol.1.* agreeth.

But where the Defendant alledgeth, that the Plaintiff was Outlawed at the suit of a stranger, as a Mainpernor, by the name of *I.S. Gent.* he shall not avoid this by saying, that he is a Yeoman, because he appeared before; also here the addition is not needfull, wherefore he shall traverse, that he is not the same person &c. *M.10 Ed.4. Nonhab. 15.*

But he shall well avoid it by saying he is a Knight, being named Esquire 38 *H.6.fol.1.*

In Debt the defendant pleads an outlawry of the plaintiff, by the name of *I. S. Gent.* The plaintiff saith, that there are two, *I. S. &c.* and that the elder is Outlawed, and that he is the yonger; it is no plea, but is put to his *Edentitate nominis*, for it is but delatory, and not in Barr 21 *Ed. 4. fol. 15. Nonhab. 17. 13. H. 4. 12. Action.*

He which was Outlawed, having his Charter of Pardon, was received against a Stranger before a *Scire fac.* sued, for this is only to the party, &c. *M. 44. Ed. 3. fol. 27. Nonhab. 24* See the contrary adjudged *Tr. 20. Ed. 3. Nonhab. 8.* and that he shall not be answered before a *Scire fac.* sued against the party &c. and with this agreeth 21 *Ed. 3. fol. 55. Nonhability 6.*

In an Attaint upon a false Verdict in an Assise, where he was Outlawed for the damages there recovered, and now had his pardon, it shall be a good recovery, though he had not yet sued a *Scire facias*, because by this suit this recovery is amented, and all that depends thereon, 30. Book of Assise. P. 20. Outlawry 4.

An Assise brought by two, one of them being outlawed, he shall be severed; and the Assise shall stand for the other 11 *H. fol. 25. 30 Ed. 3. fol. 7.*

He against whom execution was awarded upon a Recognizance, notwithstanding the defeazance of an antidate delivered after the recognizance, brought a Writ of Error thereof, and it shall be received, notwithstanding the Outlawry in the meane time alledging he having a pardon &c. and *Scire fac.* sued &c. and the Judgement was reversed 29. Assise. Plea 47. *Nonhab. 11.*

He that was Outlawed upon a *Capias* for a Fine upon disseisen found to be by force, shall not have an Attaint before he hath his Pardon, but shall have a Writ of Error, because it is to defeate the whole, and the Attaint but to the Verdict, and had assigned Error that he was imprisoned &c. 7 *H. 6. fol. 44. Error 18.* See accordingly, that the reversall of the first Judgement shall also reverse the Outlawry, and all that depends upon it, as the Judgement in the Redisseisin in the new Writ of debt upon the recovery &c. But by ouing of the Execution by *Audita Querela* upon a late Release the Outlawry against him upon the *Capias ad satisfaciendum*, upon the Execution, shall not be amented, for it doth not disprove the former Judgement &c. 6 *Ed. 4. fol. 9. Mainprise 30.*

I conceive that he that sueth Execution against me shall not disable me depending the same, to bring an *Audita Querela* against him, because I am outlawed &c. *H. 29. Ed. 3. fol. 13. Audita Querela 37.* As he which hath an Assise against me, shall not disable me at the same time by Outlawry &c. 12 *H. 4. fol. 17.*

He that was Outlawed upon a *Capias ad satisfaciendum* upon a suggestion of a Release of the Execution, shall have a *Scire facias* against the party, and then shall have Pardon, not before *H. 4. Scire facias 150.*

Outlawry,



Outlawry was avoided, for that the party was beyond the seas at that time, he was in the service of the King, with a Certificate from the Capitaine 2 *Ed.4. Rnd* 54.

The defendant passed quite in an Appeale, by alledging that the plaintiff was Outlawed in an action of Trespas, without being arraigned at the suit of the King 17 *Affise*, plea 26. Outlawry avoided for this, that he was so pronounced after that he was delivered to the Ordinary as a Clerk convict 15 *Ed.3. Outlawry* 2. Outlawry is well pleaded against the plaintiff by the name by which he is knowne, although he now sue by another name, *P.34. Ed.3. Outlawry* 16. and he shall be put from his Identity of the name.



## Admiralty.

### I. Where and in what place the jurisdiction of the Admiralty is to hold plea, and of what things.

*M. 10 Jac. in  
Cor. B. in  
Greenway &  
Barkers case,  
it was adjud-  
ged 1. That  
they may take  
the goods in  
execution,  
though upon  
the land.*

*2. That they  
may arrest and  
take their bod-  
ies.*

*3. They may  
compel the par-  
ty to enter a  
caution, which  
is not a Recog-  
nizance but a  
security by suer-  
ties, called a  
Stipulation,*

**N**ote, that the Statute restraines the power of the Court of the Admirall, that they cannot hold plea of a thing done within the body of the County, but doth not restraine the Execution of that Court to be served in the Land; for it may be that the party hath nothing upon the sea, and if he hath nothing they may well take his body within the Land, or where they shall finde him, and by the same reason they may do Execution of his goods which are on the land in any place; It is the Custome of the Court, that if the defendant make default in an action against him there, that he shall be amerced according to the discretion of the Steward, and holden a good Custome by the Court, in Trespas *M.19 H.6. fol.7. Barr* 210.

A Robber upon the Sea was taken, and arraigned before the Justices, and hanged, being found guilty, 4 *Affise*, *Plea* 25. *Corone*

*216.* Note, that the Coroner shall do his Office for the death done in the arme of the Sea, or great water, where a man may see from one side of the water to the other, so of other things there done, for the Countrey may have Conusance of them, and the Admirall shall not meddle; so it seems of things done in the sea, within the view &c. *An.8 Ed.2. Irin. Kanc. Corone* 399.

wherin the heires are bounden, and which stands to Executors and Administrators, the substance of which is *Reparatum habere, iudicatum solvere, & de expensis solvendi.*

By

## Admeasurement of Pasture.

25

By the Statute of 13 Ri. 2. cap. 5. It is ordained, that he shall not meddle but only of things done upon the Sea, and this is confirmed by the Statute of 2 Hen. 4. cap. 11. - which also gives double damages to the party who is sued against this Statute, and 10 l. to the King for a penalty, and the action for the party shall be grounded upon the Statute.

And by the Statute of 15 Ri. 2. cap. 3. he hath no Cognizance nor Jurisdiction of Contracts, wrong arising within the body of the County, nor of the wreck of Sea, nor of death and misdemeanor done in the great Ships which are hovering in the great Rivers, under the point of the same Rivers neare the Sea, and no other place of the Rivers, &c.

In a Replevin of his Ship taken in the Coast of Scarbrugh, in the Sea, &c. And the Action well lyeth when the Defendant is come in by process, for Berr sayd: that the King will have his Peace kept as well in the Sea, as in the Land, &c. Edw. 1. *Avowry*, 192.

That every water that ebbs and flowes is an Arme of the Sea, and it is sayd, That a man shall not loose his Soyle which is surrounded by the sudden encrease of the Sea, although he shall not have the water &c. 22. *Affise*, plea 93.

The Jurisdiction of the Court of Admiralty extends to things which are done only *super alii maribus*; and all the Ports of England are *infra corpus Comitatus*, and there it was adjudged 30. H. 6. in *Hollands case* because he held plea of a thing contrary, which was done *infra Poly de Hull*. he shall answer to the party damages 2000 l. *Vid. 5 Mar. Dier 160*: Action upon the case against one for suing one in the Court of Admiralty for a thing done *infra corpus comitatus* and double damages for the Plaintiff.

Note, Register 156. *Admeasurement* lieth for him who hath Common by specialtie for a certaine number of beasts, and sheweth.

## Admeasurement of Pasture.

*The Court in Admeasurement of pasture, the Writ and plea to the Writ.*

**I**N Admeasurement the Plaintiff declares, that where the defendant had Common in such a place, by reason of his Tenure, he had put therein more beasts then the defendant ought, the number, and the over-plus &c. The Declaration is good, and it is no plea that there is another who hath Common in the same place, who is not named in the Writ, for the action shall be only against him who did the wrong, and all shall be measured &c. 8 H. 6. fol. 26. *Admeas.* 1.

In an admeasurement, the Defendant sayd, That pending the Writ the Plaintiff himselfe had ejected him of his Common, &c. for which he had an Affise pending against him, &c. yet because he was seised of the Tenement for which he had furcharged the pasture, he was put to answer, 8 Ed. 3. *Admeas.* 14.

Admeasurement was brought, for that whereas the Defendant had but one Oxegate of Land, he had furcharged &c. He pleaded a Grant from the Lord of Common for two hundred Sheep, Judgment, &c. and further allowed



## *Admeasurement of Pasture.*

allowed, besides the Plaintiff had the estate of the Grantor, so he shall not be of better condition; the Plaintiff sayd, that he was Lord of the whole Town before, and the Grantor but of the third part, &c. *Markham Justice*, We will enquire the truth, &c. *Vide Ed. 1. Admeasurement 15.* That a man shall not have more Common then his Grantor hath, *Vide Edw. 1. Common 24.*

### II. *Barr in Admeasurement of Pasture.*

**I**N Admeasurement, the Defendant sayd, That S. is Lord of F. and was seised of the Land which the Plaintiff holdeth, and supposeth the Common appendant to him and his Ancestors time out of mind, as parcell of the Demesnes of the same Mannor, untill such time, when as he Common in the Wast of the sayd Town was not appendant thereunto; that he did infeoff the Plaintiff and demands judgement. And the opinion was, That he could not claim Common appendant, because it could not be appendant thereto in the hands of the Lord; although it were ancient Hyde Land, &c. when it had been in the hands of the Lord, time out of mind &c. But if such Lands had escheated to the Lord, or to his Ancestor, or come unto him as the Land of his Villain, and he grant it over, the Common shall revive to the Feoffee, (as it seemeth) And the Statute of *Merton* which is alledged, Common to Feoffees shall be intended only of Feoffments made before the time of memory, by *Shard.* who alledged the Statute of *Westm. 2. cap. 46.* That a man shall not have Title to Common by occupation, if it be not time out of mind, &c. *Tr. 13. Ed. 3. fol. 30. Admeasurement, 7.*

Unity of Possession of the one Land and the other in one hand, time out of mind, &c. seemes a good Barr in this Action; but if the Plaintiff can alledge the appendancy before the unity or possession, the appendancy shall be revived by Feoffment of the Land, to whom, &c. as it seemeth by the opinion of *Hill and Wilby*, 20 *Edw. 3. Admeasurement 8. P. 11. Edw. 3. Common 11. Contra.*

*Vide Book  
Entries 12.*

In Admeasurement, it is a good Plea, that he is Lord of the Town, *Prima Facie*, but with averment, that the Plaintiff holds not of him, the Action lyeth, although he be Lord of the place, *Ed. 1. Admeasurement 11. 32. Ed. 1. Common 29.*

### III. *Admeasurement of Common abarred.*

**I**T seems a good Barr in this, That such a cheif Lord, &c. granted Common to him for so many beasts, &c. *Ed. 1. Admeasurement 16.*

*Admeasurement*

Admeasurement lieth not for Common appendant to a Mease, and therefore *Parum* said, that there cannot be such appendancy, yet the issue was if it were appendant to the Mease 11. *Ed. 3. Common* 11.

## I V. How Admeasurement of Pasture shall be made, and what shall be admeasured, and against whom the action lieth, and who shall have it.

**L**ittleton saith, That in Admeasurement of Pasture, the Sheriff ought to summon the parties into the County Court, and they may plead there, and when Judgement is given that there shall be Admeasurement, it behoves him to make it, and the Plaintiff shall be admeasured, and the returne shall be speciall, that he hath admeasured such &c. which are all which ought to be admeasured &c. *M. 7 Ed. 4 fol. 22. Admeasure. 2.* And *Jenney* said, that the Suitors are Judges, and not the Sheriff. *Nat. Br. Fitz. 215. C.*

Admeasurement lieth not against him that hath Common appurtenant, and also by especialty without number; but well where it is of a certaine number, and there it behoves him to alledge the specialty, and to discharge him thereby &c. or otherwise he shall lose the advantage of the specialty, if he say nothing thereof in pleading 22. *Affise. p. 65. Admeas. 6. Fitzh. Nat. Br. fol. 125. D.*

A man shall never be admeasured in his own proper ground, but where there be many Tenants, and one hath Common with another, the Freehold of every one shall be Admeasured for the others Common, and the others soile for his Common &c. but where there are but two Tenants which have Common one in the others soil, there Admeasurement lieth not, for it cannot be supposed that he hath surcharged his Common, for this Common is his own soile, who is said to surcharge it by *Hussey* and *Shard*, *Green* said there, although upon the Admeasurement all the Common be cast into a certainty, yet the Judgment shall not extend but only between the parties to the Writ, and every Commoner who is given afterwards may have a new Admeasurement &c. 18. *Ed. 3. fol. 30. Admeasurement 7.*

Admeasurement lieth not between Lord and Tenant, but the Lord may approve, and the Tenant outed by him shall have an Affise, but the next neighbour which holds not of him shall have Admeasurement against the Lord of the Soil *Ed. 1. Admeas. 11. & 32. Ed. 1. Common 29. Fitz. Nat. Br. fol. 125. D.* that not against the Lord.

Yet the Lord may approve against such neighbour by the Statute of *W. 2 cap. 46.*

The Plaintiff in this action shall be admeasured as well as the defendant, if the Lord himself bring it not *Ed. 1. Admeas. 12.*

The Lord of part of a Town shall be admeasured against the other Lord,  
E
and



and his Grantee of the Common also by the other Lord who had purchased the part of this Lord who granted it *Ed. 1. Admeasurement 16.*

— *Scroope* said, that Admeasurement shall be made according to the Freehold, and not according to the Cause; and if a Tenant hold the soyle of the Common, in common with the Lord, Admeasurement shall lye against him &c. *P. 32. Ed. 1. Common 29.* And see there that Admeasurement shall not be made by peices. But in this Writ the defendant shall well Barr the Admeasurement of parcell, and of parcell thereof, by *Berry*, as where the Lord purchaseth a Tenement in the Town now having regard thereof, he shall be admeasured.

If a Tenant surcharge the Common, the Lord may not take the beasts damage fezant before Admeasurement made if such Tenant hath Common appendant there, but he may approve &c. and so it seems, that after Admeasurement, the Lord may take them damage fezant for the surcharge *M. 10 Ed. 3. fol. 56. Common 16.*

*Mombray* said, that none shall have this action which had not Common appendant *18 Ed. 3. fol. 30. Fitzb. fol. 125. b. d.*

If a Tenant surcharge after Admeasurement made, although all be admeasured, yet he who was not party to the action shall not have the *Second Superoneration*, but shall have a new Writ of Admeasurement, by *Green* *18. Ed. 3. fol. 30.*

*Vid. Fitz. Nat. Br. 12. 4. E. 3. 63. acc.*

It lieth for him who hath not estate but for terme of life 5. *Ed. 3. fol. 43.*

#### V. Where second Superoneration lieth, and where not.

**I***Enny* said, that a Writ *de secunda superoneratione* shall not be said to be Judicall made in the Common Bench, but where the Admeasurement was made *Coram Justiciariis* and not by the Sheriffe; but if the Admeasurement made by the Sheriffe be removed by Writ of false Judgement, and after the Judgement is affirmed here this Court shall award a second *Superoneration*, because the plea is before them &c. But *Danby* said, if the matter become here, be it removed duly, or not duly, the second *Superoneration* shall be awarded, and stand untill it be reversed by Error &c. *M. 7 Ed. 4. fol. 22. Admeasurement 2. Fitz Nat. Br. 136.*

New Admeasurement lieth for him, who was not party to the first action being now grieved; so a second *Superoneration* for the party alone to the Writ of Admeasurement *18. Ed. 3. fol. 3. Admeasurement 7.* And such Tenant in new Admeasurement shal not render such damages as the Statute of *W.* did give in the second *Superoneration*, nor shall he forfeit his beasts *Fitz. N. Br. fol. 126.*

Common

## Common.

### I. Common appendant, and how it shall be used.

**N**ote, If a man claime Common appendant, he shall say no more, but that he is seised of a Mannor &c. to which &c. and shall not prescribe, for so it shall be intended that he claimes right of Common by prescription, and not by reason of appendancy, by *Martin*, and the Court granted it *H.4. H.6. fol.22. Common 3.45. Ed.3 fol.13. Common 1.*

A man also shall not use this with his own beasts, other then those which litter and dung it, as Horses, Oxen, Kine, and Sheepe, and not with other. By *Prisot* and *Moile*, and *Prisot* said, that a man shall not prescribe to have Common appertaining for all beasts. Also they say, that a man may prescribe to have Common appurtenant for certain times, and upon condition; as for example, so long as they shall be dwelling upon such Lands, or untill his land be sowed &c. *37 H.6. fol.34. Common 7.*

Note by *Newton* clearly, that he which claims Common appendant, ought to claim it *Ratione Messuagii*, otherwise it is not good, and the issue was taken accordingly *22 H.6. fol.43. Common 4. vide P:11 Ed:3. Common 12.* where challenge was made because he claimed Common appendant to a Mease which could not be admeasured, and yet admitted good.

A man may well use Common in the Wast of G. appendant to his Mease and Lands in C. with Beasts couchant and levant there, although that they did work from day to day at his Plow in B. where the Towns did not enter-common &c. *M:10 Ed:3. fol.56. Common 16.*

*Thorpe*, *Basset*, and *Banck* said, if a man had used at all times a Common with his Beasts, couchant and levant in one certain place time out of mind &c. that this Common shall in Law be adjudged appendant; and he shall not have it as in grosse, if he cannot prove that he claimed it at all times among the Commoners as in grosse &c. *22 Assise:Pl:36. Common 19.&c.*

Note, per *Choke* and *Danby*, a man may have Common in a Pischery appendant to his Free-hold, as well as Common of Pasture *4 Ed:4. 29. Common 8.*

In a Replevin of Beasts, the Defendant avowes the taking in his improvement of Wast, leaving sufficient &c. And note, that the sufficiency shall be according to the quantity of the Land of the Plaintiff, to which

Note by Hale's and Fitz. 26

H.2.4. Common appendant is by

prescription, and if common right

cannot begin at his day, contra-

ry of common appendant.

21 H 7. 35.

4 H. 6. 13. 22.

H.6.10. to al-

ledge it to be by prescription

will make the plea double,

and it belongs only to arable

land. 26 H.8.4.

37 H.6. 34.

and is for so many Tenants

as can manure the land only

Vid. 40 E. 3.

in a Replevin a man is prescribed

to have Common appendant

for all manner of beasts.

Vid. Next before.



&c. And he shall not have Common appendant to the Land newly approved: also it shall be according to the quantity of his Land in another Town where the Towns enter-common &c. 16 Ed:3. Common 9. 10 Ed: 2. Common 22.

The Lord shall have Action of Trespass as against a Commoner, that shall break his approvement for Common appendant, where had sufficient left, and that shall come id issue in the Action 10 Ed: 3. fol: 15. Common 15.

If a man be disseised of his Common appendant, and alieneth the Land, and taketh back an Estate &c. he shall not have an Assise of Common by *Wilby*, which was granted, because now he hath the Land to which &c. by a later Purchase: Also it is agreed there, if a man purchase the Land in which &c. that yet this Common shall revive by severance of the Land back again, as by Alienation &c. and yet it was extinct: *Scot*, this is for the Vicinage where others Common there. Also, when all was in one hand, he shall use this as Pasture, though not as appendant 4 Ed: 3. fol: 45. Com. 17. Yet see P: 11 Ed: 3. Common 11. Issue was taken, if both the Lands were in one hand &c. and so the appendancy extinct, notwithstanding the severance afterwards 14 Ass: P: 21. the Assise awarded notwithstanding the unity of possession was pleaded, Common 18. vide of Extinguishment 11 H: 4. fol: 5. 14 H: 4. fol: 6.

Usurpation shall not gain Title to Common, unlesse he have had possession time out of mind 10 Ed: 2. Common 22.

The Statute which gives Common appendant to the Feoffee of the Lord is to be understood of Feoffments made before the time, whereof the memory of man &c. not after 18 Ed: 3. fol: 30. *Admeas*. 7. See there, and see 17. Ed: 2. Common 23.

16 E. Co. 1. B.  
adjudged ac-  
cordingly of  
Common in-  
certain but she  
shall have al-  
lowance for it.

A woman shall not have Dower of Estovers appendant not certaine; in like manner if they descend to many heires, one only shall have them, and the others allowance from him &c. M: 2. Ed: 2. Dower 123:

In an Assise against the Lord who surcharged the Land, so that the Tenant cannot have sufficient, as well as if he had approved more then he ought by *Berr*. 32. Ed: 1. Common 29.

*Ald.* said, that the Lord shall never avow the taking damage feasant of beasts Couchant and Levant upon the Freehold to which a man hath Common appendant for the surcharge, before Admeasurement be made 10 Ed: 3. fol: 56.

### 11. Common appurtenant, and how it shall be used.

9 E. 43. 14 H.  
66. 4 H. 6. 13:  
and this Com-  
mon may be  
made in gross  
15 H. 7. 7.

**N**ote, If a man prescribe to have Common by reason of his Land for all manner of beasts, this shall be said to be Common appurtenant, and not appendant *Vt supra* 37. H. 6. fol: 34: Common 7.

A man Grants to T. a Mease and Land *cum communia in moris & breueris*, this is common appurtenant according to the quantity of the Land *per l'Opinion*, and it seemes by *Hill* that he shall have Common in *Turbary*: also, if there be such usage there &c. 15. *Affise P. 5. Common 13. &c. vide 15. Bien 15. Ed. 3. Affise 3.* and there that an especiall Grant of Common, and no Town limited is void.

Trespas of Trees carried away by the Bishop, the Defendant as Tenant to the same Bishop in *B.* justifies the taking by prescription for such of the Tenants which first came, as of the boughs of the Trees blown down by the wind, or cut down by the Bishop and which he and his Ancestors &c. as terr-tenants have used as Common appendant to the mease of *B.* &c. and it was a good justification, but it seems, that this is a profit appurtenant, as he which prescribes to have common of *Turbary* to dig, and sell at his pleasure, this is appurtenant by *Wilby* &c. *T. 14. Ed. 3. Barr. 277.*

A man grants *quandam assertam terra cum communia turbaria quantum pertinet ad duas bovatas terra* in *T.* this is appurtenant, because newly granted, also *Herle* said, that *Turbary* cannot be appendant unto Land, *7 Ed. 3. fol. 43. Affise 134.*

Common appurtenant may be well used in the night, *5 Ed. 3. fol. 41.*

If I be enfeofed of Land, by reason of which I ought to have Common, and I alien to another the Land, who useth not the Common, but sells it over, his alienee shall never have the Common, *Ed. 1. Common 24.*

A man grants *quandam assertam terra cum communia turbaria, quantum pertinet ad duas bovatas terra*, yet this is in grosse not appurtenant, because *Turbary* cannot be appurtenant to Land by *Herle*, *7 Ed. 3. fol. 43. Affise 134.* see before Section 4. & *quare.*

### III. Common in grosse, and how it shall be used.

**B**Y grant of Common, wheresoever, the beasts of the grantor have gone, the Grantee shall have in the place where &c. although that afterwards it shall come to passe that the grantor had no beasts, otherwise it is of Common, whensoever, for there it behoves at all times, that the grantors beasts first were in &c. *Quare* of such grant in Fee whensoever, &c. *9 H. 6. fol. 36. Common 2.*

Note that he which hath Common in grosse by prescription, as he and his Ancestors &c. without number, shall use it with what beasts he will, and may well agist beasts to be there, by *Bab. Martin* and *Paston*, so of Common for 20 beasts granted to me, if it be not expressed of mine own, as also if one prescribe to have Common for his own beasts, he cannot put in others, by *Martin* 11 *H. 6. Common 3.*



## Common.

If a man grant me Common for my life for ten beasts by the yeare, or ten Cores of Wood by the year &c. And I do not take this profit for two or three years, I cannot by this take so much more the next years which follow, for this is a thing annexed to the Land, and I shall have remedy by Writ of annuity *per Curiam* T.27 H.6 fol.10. Common 6-

A man grants Common of Pasture to R. *in Pasturis suis* to go with his beasts; and the Opinion seemed that he shall have Common according to that which he hath used after the Grant, without alledging that the beasts of the Grantor went there Hill 11 Ed. 3. Common. 10.

A man grants Common by Deed, which he willeth to be *infra metas & bondas* of the Common of such a Town, the Jury found in an Assise that the Grantor held all his Lands in this Village in severall, and that the Grantee was seised &c. and it seemes recovered upon the matter. But if the Grantor had a place in the Town which was Common, and another which was severall upon such Grant, the Common only shall be charged by Hill. 14. Assise. P. 22. Common 12.

When a man Grants Land, and a Mease with Common, this shall be taken to be Common appurtenant, and not in gros &c. 15. Ass. P. 5. Common. 13.

In an Assise of Common claimed by prescription in gros, and found that the Plaintiff &c. at all times had used the Common not with their Beasts Couchant in any certaine place, but with beasts of their Granges, and with their beasts driven to Faires &c. whereupon he recovered: Here agreeth 22. Assise. P. 36. Common 19. *vid. Divisioni. cap. 7.* that usage made such Common to be appendant.

A man Grants eighteen acres of Land, parcell of his Land in B. *similiter cum communia pastura in omnibus terris suis*, the Common shall he understood of all Lands in the same Town, and intends Common without number, and the Grantee in an Assise made title, that after he granted the Common to I. P. who was seised, and regranted unto him, and he was seised untill &c. all found accordingly. But that I. P. was not at any time seised by the Grant, nor put in beasts, nor had any beasts to put in, yet the plaintiff recovered by Award, because the Common is in him by the Grant without Livery of any man; as Grantee of an Avowson may well grant it before he hath presented, and the Grantee shall have a *Quare impedit* at the next avoidance &c. 36. lib. Assise. P. 3. Common 20. *Vide Common 24. Ed. 1.*

Note, Common, Way, nor Estovers appendant, cannot be made in gros, nor severed as Common appurtenant, Villaine regardant, and Avowson appendant may 5 H. 7 fol. 7.

By Grant of Houfe-boote and Hey-boote, the Grantee shall have nothing for new building Ed. 1. Common 28.

## IV. Common for cause of vicinage, and how it shall be used.

**N**Ote, that by the opinion of many, that no Lord shall claim Common by reason of vicinage, but onely such Lord as is seised of the Town in possession, and he shall have common for him, and his freeholders and his free tenants, and lies for term of years, 22 Hen. 6. fol. 51: Common 5.

Common by vicinage, is by prescription, and the Lord approving shall leave such Commoners sufficient Common, according to the quantity of their Land, 16 Ed. 3. Common 9. W. 2. cap. 46.

Beasts working in one Town, may well Common in another Town, which do not enter-common, by reason of the mease and Land in that Town, and their lying there &c. 10. Ed. 3. fol. 16. Common 16.

If he which hath Common appendant purchase the Land in which &c. and afterwards the Lands are severed by alienation &c. the Common is remised, and is now by reason of vicinage, 4 Ed. 3. fol. 45. Common 17.

So if a man seised of 20 acres of Land arable, enfeoffe me of parcell thereof, I shall have Common in the rest, and this for cause of vicinage, 17 Ed. 2. Common 23.

Choke held clearly, that prescription to have common by vicinage, could not be laid in inhabitants, which are not a corporation, but in the Lord for them, yet it seems by *Danby* and *Littleton*, they shall prescribe in the usage well enough, 7 Ed. 4. fol. 24. 8 Ed. 4. fol. 43. Prescription 16.

## V. Approvement.

**I**N an Assise of Common in an Acre of Land &c. the Defendant alleged that the Acre was but a Rood, and that had an ancient mease, and the Rood adjoyning, and because his Mease was not sufficient for his necessities according to his estate, he did build upon parcell of the said Rood to charge his house, and of parcell made a Curtilage, and shewed how much of every thing &c., and he shall not be compelled to take issue, whether the house was sufficient for his Freehold before, but the Statute shall be understood, that he shall amend it according to his Estate to be sufficient for his dwelling &c. by *Grein* 32 Ed. 3. and 32 Ass. P. 5. Common 14.

Vide the Statute Anno 3. Ed. 6. cap. 3. Approvements 3 That a man may well approve in his Land or Wast to make a house and Land adjoyning to the quantity of three Acres, or to make Gardens or Ponds, to the quantity of two Acres, notwithstanding Common claimed there &c.

## VI. Common.



## V I. Common.

**I**N Trespasse by the Lord for casting down a ditch, the other justifieth for the using of his Common appendant, the Plaintiff saith, that he as Lord approved it and left sufficient, and the other was compelled to answer thereto in this Action, although the Statute speaks, *inquir. veritatem per ass. &c. 10. Ed. 3. fol. 15. Common 15.*

Note, that a man for his Common appendant may break down the hedge made upon the same Land, whereof &c. but if the hedge which incloseth it be made upon other Land in which he hath not Common, he cannot break it, but a parcell thereof to have a necessary way &c. 16. H. 7. fol. 10. Common 36.

The Lord cannot take the beast of him who hath common appendant, damage feasant, before admeasurement made, but he may approve against him &c. which was granted, 10. Ed. 3. fol. 56. Common 16.

Note *per Curiam*, if a man grant me Land and Common &c. he cannot approve contrary to his deed, in the waist whereof the Common &c. H. 3. Ed. 2. Common 21. 31. Ed. 1. Common 27. 12. Hen. 3. Common 25.

If the Lord will make a Dike for approvment, and the Commoners disturb him, it is a disseisin. Likewise approvment is well made by this which he after the gaining such parcell to himself, without the enclosing with hedge or ditch &c. 32. Ed. 1. Common 27.

If the Lord sell all his Land in the Town, saving his Seigniorie, yet he may approve upon the waist, and shall have the agistment there; it seems not, if he alien all his Land with the appurtenants *per How Justice*, 32. Ed. 1. Common 29. and see there that an assise lieth against him if he shall surcharge, as well as if he approved more then he ought *per Berr.*

He that approves of the waist ought alwayes to leave sufficient Common to the Tenants and neighbours, 17. E. 2. Com. 23. & 6. H. 3. Com. 26. 16. E. 3. Common 9. and by the Statutes of *Morton cap. 4. and W. 2. cap. 46.*

An Assise lyeth of a lawfull approvment, as to the sufficiency of pasture, if he have not a ready way to the Common, or from the Common to the water for his beasts, 11. H. 4. 25. In like manner, he that grants to me Common for a certain number of beasts, every where in such a forrest &c. now he cannot approve in any part of the forrest without my assent, although he leave me sufficient, and more, and if he doth, an assise lieth, *Anno 12 Hen. 3. Common 25.*

Note, if the Lord alien parcell of the waist, this is approvment, and the Feoffee shall hold this in severall against the Commoners by *Stone & Mutf.* but *Scrope and Berr.* said, that such approvment was at the Common Law, and this not the approvment which the Statute giveth, by which the Commoners shall not by such alienation and enclosure of the Feoffee be outed from their Common there &c. 16. Ed. 2. *Warr. Charters* 31.

If a man hath Common appurtenant in three Townes, the Lord of one of the Towns may well approve, leaving him sufficient &c. and this is understood having regard to the Common which he hath left in all the three Towns, having regard to the quantity of his Freehold, to which &c. by *Herle Anno 4. Ed. 3. It. D. Assise 178.* So so that Lord who first approves prejudiceth not the others, because it is a great mischief that none of the Lords should approve &c.

If a Lord plow the Land, so that the Commoner cannot have his Common, he shall have an assise: so if he in whose woods I have common of Estovers, cut down all the wood &c. by *Markham and Rickhill*, there I shall have a *Quominus. Hanck*, this is true, and this *Quominus* is an Assise, *M. 2. H. 4. fol. 11.* Action upon the Case 24.

Approvement for the Tenant against the chief Lord, 18 Ed. 3. 43. vide *Assise divis. 17. cap. 3.* a good case.



## Way.

To whom the soil of the Common way belongs, and who shall have the Trees and other Profits growing therein

**N**ote by the Justices, that in the Kings high way the King hath nothing but passage for him and his people, but the Freehold, and all the Profits, as Trees &c. continue to the Lord of the soil, *M. 8. d. 4. fol. 9. Way 1. 2. Ed. 4. 9. Trespass 95.* agreed by *Littleton* and *Danby*, and hereto agreeth *6 Ed. 3. fol. 23.* and there note also, if the King be bound to make a bridge to travell over my water, the soil is mine, and the fishing in the water, and the way belongs to the King &c.

And if Nuisance be made in the high way by digging &c. the King ought to cause the punishment for the Nuisans, and the Lord shall have his action for digging his Land, by *aresby*, which *Needham* granted, and he which justifieth the taking in such way, it behoveth him to set down, that it is the Kings high way, and so hath been time out of mind &c. *M. 8. Ed. 4. fol. 9. Way 1. vide 2. Ed. 4. fol. 9.*

27 H. 8. 27. acc. but see there by *Fitzh.* If a man make a Ditch crosse the high way, and I and my horse riding in the night fall into the ditch and am hurt, I shall have an Action upon the Case against him who made the ditch, although it be in the Kings high way.

F

II. Difference



## II. Difference between the Kings high Way, and the Common Way.

**A**LD' Justice said, that there is a way to a Town, which is a Common way, and not the Kings high way. *Parn*, I hold all wayes to be the Kings wayes, but Common wayes I hold those, which serve the people of Towns to go in their own fields, &c. 6 Ed. 3. fol. 23. Way 2.

## III. What the Lord of the soil may do in the high way.

**N**ote, that the Lord may not do any thing in the high way which may impair it, or shall be Nufans to the Passengers, but he may cut down hills to make it even, or make any other profit, which is no Nufans &c. 32 Ed. 3. Barr 261.

## IV. Where a water shall be a high way, and that after the course changed.

**N**ote *Thorp* said, if a water were a high way, which water issued by the soil of another Lord; and for one cause or other the water changed his course upon the other soil, yet a man shall have an highway there, as before, as he had before in the ancient course, so that the Lord cannot hinder his course made anew, and saith, that *Sr. W. Herle* adjudged this in the *Eyer of Nottingham* 22 Ass. P. 93. Barr. 302.

## V. When and how a way shall be extinct and determined, and where it shall be granted without deed.

**E**Very way dependant is extinct by Unity of possession, 11 H. 4. fol. 5. Yet it is held, if I use a way for my Mannor between two acres, and alien all but them, the alienee shall have the way, but if I alien those two acres onely, I shall not have the way by them, per *Hill* 20. Ed. 3. *Admorsament* 8.

3 H. 6. 31. In Trespass the Defendant justified for a way appurtenant to his house in D. by Prescription to go to 8 acres of wood in C. the Plaintiff said, that since time of memory, I. N. was seised of the Land wherein the Defendant did claim the way and of the wood, and the opinion was, that the way was extinct by the unity of possession.

In a partition of a Mill and a Meadow, the way over the Meadow was allotted to him that had the Mill, and it was good without Deed, and he shall have it as long as he hath the Mill, and an Assise thereof lyeth, yet of a Way in grosse which is granted to a Freehold, no Assise will lye, although that the Grantee purchase the Land afterwards, to which he must go by this way, 21 Ed. 3. fol. 2. *Nusans* 2. That Nusans lyeth not of a way in grosse, 11 H. 4. fol. 25.

H. 23. *Eliz.* in Com. B. that by the Partition the way was revived which was suspended by unity of possession before.

Note, where a man justifies by

reason of a way he ought to shew the certainty, viz. that he ought to have a way from such a place to such a place, as from his house to such a Close, or to the Church, &c. he ought to set forth the quantity of the way, viz. so many feet, if he make title to the soil, 39 H. 6. 6. See Book Entries, he ought to claim certainty to go, carry, and recarry, and must shew from what time, and to what Freehold it is appendant. Yet see 11 H. 4. 82. the Defendant prescribed in a way over a bridge in B. to his Mannor in S. to carry victualls and necessaries over the bridge, and did not shew to what place, and yet holden good by Hanckford, vid. 30 H. 6. 7. and 8: Vid. 20 Assis. 8. A man shall not have an Assise of a way, unlesse it be appendant, and for a way in grosse no assise of Nusance lies, but an action upon the case, 34 Assis. 13.

### V I. Way by Prescription, and remedy for the impayement thereof.

**A**ction of the case against him who had plowed his Land over that which the Plaintiff, &c. time out of mind &c. had a way to such a Meadow, &c. and issue joyned upon title of prescription, and found for the Plaintiff: And at last the Writ abated by award because he ought not to have this Action, but an Assise of Nusans, yet had he the possession of the Way, but not so ready, &c. 2 H. 4. 11. Action upon the case 24. as upon the course of the water turned in part, so that the Mill could not grind so much, &c. An Assise lyeth, by *Marckham* there.

### VII. Where a Way shall be appendant to a Mannor, or House, &c. or by reason of Tenure.

**A**ction upon the case for raising a wall whereby he could not have his way which he ought to have, *Ad ecclesiam ratione tenura sua*, &c. and the Writ good, which said *Ratione tenura*: although he had it but for years, Note there, This Action lyeth where the way is straightned, but where the whole is stopped, the Assise lyeth by the terr-Tenant, but if this be done by a Stranger, an Action upon the case lyeth. And in the Assise it is necessary to name all the terr-Tenants although but one had stopped it, &c. 133 H.

A man shall not have a quod permittat of a way, if it be not claimed to some Freehold, or if no claim-

ed from some Freehold to the high street or Church, by *Finchden* 47 E. 3. 8. vid. 30 H. 6. 8. 39 H. 6. 6, 6. fol. 26.



6. fol. 26. Action on the case, 13. And so it was adjudged *M. 28. and 29. Eliz.* in the Kings Bench in *Giles Case*, so it was adjudged in the same yeare in the *Lady Greshams Case*, for straightning of a Way in *Osterly Parke*.

In an Action of the case against a Prior, for not repaying a Bridge which he ought to make by reason of his Mill, and which he and his Predecessors have made time out of mind, by which Bridge, the Plaintiff and those whose Estate he hath time out of mind, &c. by reason of his Mannor of *S. &c.* used to passe with Victualls, &c. It was a good Title to the way without clayming it to any certain Free-hold; but prescription is Title enough to pass a Bridge, and then where he pleaseth, *Tr. 11 H. 4. fol. 82.* Action on the case, 30.

### VIII. What person shall be compelled to make a Way or a Bridge.

**V**Pon a Commission to enquire who ought to cleanse such a Brook, it was presented, that it had not been cleansed time out minde, and that no man ought to cleanse the same; and moreover that the Abbot of *D.* had the Lordship over some part thereof, and the Earle of *H.* the Lordship of the other part, and that they had the Fishing there, and that four Townships, viz. *&c.* had their passage in the same River, and thereupon the Opinion was that it should be cleansed by the Townships, and the Lords in Common, and if the Townships had not the Passage, the Lords alone should do it for their profit of Fishing *&c. 37 Affi. P. 10. Barr. 305.*

The water that runs between two Lordships, is only to him in whose Lordship the Spring is, and so shall continue, although that by long continuance it be driven in some places all into the Soyle of the other Lord, and his Soyle increase; but if such increase of the water be by sodaine flood and violence of water, the other Lord shall not lose his Soyle thereby *22 Affi. P. 93. Barr. 302.*

Note, That he who hath made a Bridge of Almes time out of mind &c. shall also be bound thereby, as if he had been charged therewith by reason of his Land *&c. 44 Ed. 3. fol. 31. Barr. 203.*

*Vid. 41. Ed. 3. 17. acc.*

He that is charged to cleanse a Dike by presentment shall answer afterwards to the continuance of cleansing it at all times after the presentment; and an Abbot shall answer for his own time, where the Presentment was in the time of his predecessor *5. H. 7. fol. 3. Barr. 140.*

Note, it is held if a man have land joyning to the Kings high Way, that he is bound to cleanse the Dikes without any prescription; but if other land lye between the Way and his Land, there it ought to be bound by prescription *&c. 8 H. 7. fol. 5. Barr. 138.*

It was presented that the Abbot of C. ought to repaire such a Bridge, he for his discharge alledgeth another presentment before, which was, that he ought not to repaire but two Arches of the Bridge, *Et pontem ultra cursum aqua et non fines ejusdem pontis*, yet because it was all one Bridge, and it appeared not there, who ought to repaire the rest, so of no value, he was put to answer over 47. *Affise P. 37. Affis. 353.*

And note there, although the Soyle be anothers, yet he may well use it for making Reparations without his leave &c.

### IX. *Affise of way, and when it lyeth*

**I**N an *Affise de libero tenemento*, and the Plaintiff made his plaint of a way over the land of the Defendant, and it was challenged, because this is no profit but easement, and adjourned, and now judged, because that the Writ is *de libero tenemento*, and the plaint of a way which is no freehold, &c. the Plaintiff took nothing, but was amerced, 34 *Aff. P. 13. Aff. 317.*

An *Affise of Nufans* lyeth for a way which is all stopped up; and this by the Terr-tenants or one of them. Otherwise an Action upon the case 33 *Hew. 6. fol. 26. Action upon the case 13. Vide division 7. cap. 1.*

Hanck said, that an *Affise* lyeth not for not doing, as for not repairing, not cleansing, &c. But where a man doth that which he ought not to do; the *Affise* lyeth, as by raising a Nufans, or by stopping, &c. and for not doing, an Action upon the Case lieth, which *T birn*: granted, *Trin: 11 H. 4. fol. 82. Action upon the Case 30.*

In an Action upon the Case for stopping an hole by which the water and the fish did run readily from his Weares in his Mannor of *W*: the Defendant saith that he himselfe hath a Weare more neer, &c. and that which he made was in amendment of his Weare, and in his own Soil, and demanded Judgement, &c. And for that the Writ abated: For the Defendant being Terr-tenant where the wrong is supposed to be done; the Plaintiff ought to have an *Affise of Nufans* by *Green, P. 31 Edw. 3. Action upon the Case 38.*

### X. *Action upon the Statute, and the authority of the Marshall of the Kings household.*

*A Declaration in an Action upon the Statute of Labourers, Liveries, forfeiture of Marriage and others &c. and the forms of the Writs.*

**I**N an action upon the Statute of Labourers, declaring that the Defendant a certaine yeare, day and place took one *A.* out of his service, and was compelled to set down the day which hee retained the said *A.* in certainty, and the issue was, who first retained him, *H. 3. H. 6. fol. 31. Action upon*



## Action upon the Statute.

upon the Statute. *Vide Fitzh.* upon this matter abundantly. fol. 167.

In an Action upon the Statute of Liveries against divers, supposing that they severally &c. and declares that every one of them had received a robe, and it was good. As in a writ of *Decies tantum*, the Plaintiff declared against every of them &c. *M. 8 Edw. 4. fol. 22.* Action upon the Statute 5.

Information for the King upon the Statute of Liveries, hee shall not rehearse the Statute, nor alledge the certainty upon what Statute it was founded, and yet good: But shall alledge that *A.* such a day, he did give unto *B.* in such a place a piece of cloath to make him a Coate, and that *B.* the same day received it, and made him a Coate, and used it, and it was held naught, because hee did not shew where he used it. *Hussey* also said, that he shall be punished for the receiuing, though he never used it. *Vide the Writ H. 5. H. 7 fol. 17.* Action upon the Statute 7.

In Trespasse, declaring for hunting in his parke &c. and found for him, yet he could not have Judgement according to the Statute *de parco fracto*, because he did not make speciall mention thereof in his Writ *M. 47 Ed. 3. fol. 10.* Action upon the Statute 13. See the same reason given in another such like action by *Bab: P. 9. H. 6. fol. 2. Judgement 10.* yet to *Paston* it seemed, that he should have Judgement upon the Statute, because it is general, *W. 1. cap. 20.*

In Trespasse against many, supposing they had broken his Parke, and taken his wilde beasts &c. One came and pleaded not guilty, and it was found that he went into the Parke to hunt but killed not any, and assessed damages, the Plaintiff released the others; whereupon *Hulls* awarded, that hee should recover against him, and that he should be taken and had to prison for three years, and make fine to the King, and at the end of the three years should finde surety for his good behaviour afterwards, otherwise he shall abjure the land. *5 H. 5 fol. 1. Judgement 62. Westm: 1. cap. 20.*

Upon a *Quare se intrusit maritaggio non satisfacto* by an Abbot, supposing that the Auncester held of his Predecessor Land and Rent, and that he offered him a convenient Marriage, and he refused, and intruded himselfe in the time of the Predecessor, no agreement being made with the Plaintiff, and all held good without alledging the no agreement made to the Predecessor, *T. 11 H. 4. fol. 82.* Action upon the Statute 8.

*Vid C. 4. part. 318 in Palmers Case the Lord shall have the Fines le value, without tender.*

*Vid. C. 31. Affs 26. Br. 612. 10 h. 8 br. 362. 60.*

*Vid. 21 E. 4 43 16 E 3. Action the Statute 14 31 Affs 16.*

In this Action the Plaintiff declares of a tenure in Knights Service, and that he tendered a convenient Marriage, viz. *M.* the daughter of &c. and no tender without shewing the woman. *40 Ed. 3. fol. 6.* Action upon the Statute *Vid. 9 Eliz. Dyer 255.* If the Plaintiff in his Writ and Count supposeth a tender, yet gives advantage to the Defendant to traverse it.

In intrusion of a Ward, declares the tenure, the seisure of the Ward, the tender of the marriage, and that he refused, and married himselfe elsewhere within age, and entred at his full age, having made no agreement with him &c. the writ was good, which made the Defendant heyre to his father alone of Lands given in speciall taile to the father and mother, where  
Thee

the survived, because in the personalty, as ravishment and ejectment of Ward, yet *Finch* argued to the contrary, because the heir shall have answer to the Tenancy, although he held nothing of him, 43 *Ed.3. fol.*  
4. *Action upon the Statute 10.*

Upon a *quare intrusit* by the Lessee, declaring, that as the Guardian &c. and untill full age of the Defendant, to him belonged by the Lease which R. of whom T. the Father of the Defendant held in Knights service, thereof made to the Plaintiffe, and said how that the Plaintiffe was possessed untill the twentieth year of King *Hen.* the father &c. That this Defendant being within age, that is to say, two years before his full age, abated &c. and the Wardship of the Plaintiff detained untill the day of the purchase of the Writ, and although it appeared, that if he were within two years of his age, in the twentieth year of *Ed.2.* that now he is of full age, so that he detained the Ward to the day of the Purchase of the Writ, which was in the sixth or seventh years of *Ed.3.* so contrariety in the Declaration, yet because if it were more, yet it is two years. Likewise the alledging of two years is a surplusage of the Declaration &c. all was adjudged good, *M.7. Ed.3. fol. 58.* *Action upon the Statute 19.* See there the Declaration in *Cessatve* shall be to cease for two years, yet it is free to tender the arrerages of twenty years, if be arrear so long &c. but this is given expressly by the Statute, &c.

*In valore maritagii*, the Plaintiffe declared that the Ancestor held of the King, that after his death he seised the Land, and the body of the Defendant, and granted it to him, that he tendred him a convenient marriage, and the Defendant refused &c. & *nota*, that the detaining of the Lands after the full age of the heir, shall in no wise be satisfaction to the Grantee of the King, unlesse that the Land be sued out of the Kings hands, for the Grantee shall render the value to the King &c. *T.43 Ed.3. fol. 20.* *Action upon the Statute 11.*

In a forfeiture of marriage the Plaintiffe supposed that he tendred a convenient marriage, which the Defendant refused, and refused the agreement made at his full age, *contra formam Statuti*, and good, for this, *contra formam Statuti* is not understood to be but as an action was given by the Statute, but that the value &c. and note, that by the Statute the Lord is at his election to retain the Land for the double value, or to demand it by action, 18 *Ed.3 fol. 18.* *Action upon the Statute 15 2 Ed.2. Action upon the Statute 23.*

Forfeiture of marriage upon the Statute of *Merton*, he declared not, that the Defendant married himself within age, nor in what place &c. yet all good: but without tender within age action lyeth not, *Hen.14. Ed.3.* *Action upon the Statute, 16.* the Plaintiffe compelled to alledge what woman he tendred 28 *Ed.3. fol. 92.* *Action upon the Statute 18.*

Forfeiture of marriage by the Assignee of R. of whom the Ancestor held &c. and declared upon the tender and refusal within age, and the marriage agreement not made, and upon this matter recovered the double value for the



## Actions upon the Statute.

the marriage of himself, for the generall allegation of (the agreement not made) shalbe intended according to that which he ought to recover, *scil.* the double value; also the Plaintiffe declared that he was possessed of the body of the Defendant, whereby he needs not to alledge that he is heir of him that is dead &c. and also in as much as he was possessed, he need not make any mention of the Grant of *R. Hil 14 Ed. 3. Action upon the Statute 17.*

In forfeiture of marriage, it needs not suppose in the Writ, that he is seised of the Wardship of the Land, for this is a severall action, *2 Ed. 2. Action upon the Statute 23.*

See the Writ before, and it shall be a good plea to the Writ, to say, that the Plaintiffe is now seised of the Land; so that he may take the value according to the Statute, but when the heir had the Land it self for him who is the assigne, action lyeth &c. *Temp. Ed. 1. upon the Statute 36.*

In a forfeiture of marriage it shall be a good plea to say, that his ancestor held of another by priority, *2 Ed. 2. Action upon the Statute 23. 7 Ed. 2. Action upon the Statute 32.*

In a forfeiture of marriage where he demands the double value, he ought to declare upon tender and refusall, but where he demands but the single value, he needs not tender *31 Ass. Pla. 26. Action upon the Statute 32.*

In an action of a woman ravished *cum bonis &c.* against *R.* and a woman, the action is good, although the woman were dead, or divorced at the time of the action brought, and so not his wife, *43 Ed. 3. fol. 23. Action upon the Statute 12. 44 Ass. pla. 13.* agree, for it is not to recover the wife, but damages in this action.

The King sueth a Writ, which sheweth (as it is ordained by the Statute) that if any man be put upon an enquest, and take of the one part or the other &c. and the Writ sheweth that *W.* and *R.* did take, and the Writ was directed to the Justices of the Bench &c. and the matter appearing of Record, it shall be as sufficient for the King as an Indictment &c. *8 Ed. 3. fol. 30. Action upon the Statute 21.*

*T.* brought a Writ against *N* Sheriff of *S.* in these words, *Rex coronat. &c. Si T. &c. Pone N. &c. ostensur quare cum inter &c. ordinatum quod nullus Vic. ponat in inquisit. &c. aliquos nec aliter, nec alio modo quam ordinatum est per Statutum, & si &c. puniatur &c. Predict. Vic. qui in quadam inquisitione inter R. petent. et pred. T. tenentem de Manerio de D. homines minus sufficient. nimis remotos, et magis suspectos contra &c. per quod idem T. Manerium predictum amisit &c.* and the Statute *Articuli super Chart* saith, that the Sheriff or Bailiff shall put upon the inquest, the nearest, the most sufficient, and least suspected, & declared that the Sheriff put upon the Inquest five which were not sufficient, because they had not an 100. shillings in Land, and dwelling far of, *scilicet* twenty miles, and suspected, because they had taken of *R.* to speak for him, and forced the other to speak for *R.* and the Writ and the Record was viewed if they were on the Inquest before

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before they were put to answer, and did not recover damages, but only for delay, not according to the value of the Land &c. 8 *Ed. 3. fol. 30.*  
*action upon the Statute 20.*

*Contra formam Feoffamenti* against a Prior, for that he did distrain him to do suit at his Court of *T.* the Defendant alledged this at the prayer of the Plaintiffe, Predecessour of the Defendant in allowance of suit due to the Court of the Prior of *P.* for his ease &c. they were at issue upon the seisin of the suit to the Court of *P.* time out of mind, &c. *M. 3 Ed. 2. action upon the Statute 24.*

*Contra formam Feoffamenti* against *B.* and *E.* his wife, declares that they distrained him to do suit at their Court of *C.* contrary to the form, &c. where he nor his ancestors did use to do this suit &c. and it was good without shewing of the feoffment, they were at issue of the seisin of the suit to the Court of *C.* time out of mind &c. 3 *M. Ed. 2. Action upon the Statute 25.*

The Major and Commonalty of *L.* brought an action of Trespasse upon the Statute of Forestallers against *I.* declaring that he was a common forestaller &c. of beasts and wares, and sold them again at double &c. and because no certain fact was alledged, the plaint abated; *M. 3 Ed. 2. action upon the Case 26.*

*I.* brought an action against *C.* for that he did abet and procure *Alice* to sue against him an Appeal of the death of her husband, by which he was imprisoned and afterwards acquitted, and the Writ and Declaration adjudged good, without alledging that the Appellor is not sufficient, yet an action otherwise lieth not, and although that he had declared of Damages of 1000 *l.* where the damages by award, for which action alone lyeth, were onely 100 *l.* *M. 3 Ed. 2. Action upon the Statute 28.*

Action brought against the Bayliffe of the Bishop of *W.* for amercing him for a small Trespasse contrary &c. and therefore wrongfully, that whereas this Plaintiff sued Actions of Trespasse against many in the Court, &c. at such a day, at which day he was essoyned by an essoyn against all, and challenged because there were not severall essoyns against every one, and thereupon a non-suit was awarded, and he amerced a mark and distrained for it, notwithstanding a Prohibition delivered to the Bailiffe in the presence &c. and the delivery of the Prohibition not traversed, if the amerciament were offered by his Peers, *M. 10 Ed. 2. action upon the Statute 34.*

Note, the Writ founded upon the Statute supposed that a man had distrained his Beasts of his Plow, where he might have found others, &c. lieth not but only between Lord and Tenant, by *Stone* and *Thond.* Justices, for it is not granted to him which cannot sue a Replevin, and plead the same to Avowry, and out of his Fee is no plea here, because the Action confesseth the contrary, and the Action lieth before the deliverance made, or after, for the wrong, *M. 18 Ed. 2. action upon the Statute 35.* shews unto you,

G

That



## Action upon the Statute.

That it is provided, &c. that every free man ought to make an Attorney at the County, Hundred, Court Baron, &c. And that he brought the Kings Writ to the Court of the Prior of B. holden, &c. and prayed him for to receive an Attorney for him, and he would not: And because that the Mannor was ancient Demefn, and the Plaintiff was a Tenant therof, and to be taxed by the Prior &c. so no free-man, for he shall not have any Action, but *Right Close*, or *Monstraverunt*, the opinion was that the Action did not lye, *Temp. Ed. 1. Attorney 106.*

### II. Bar in Action upon the Case.

**I**N an Action upon the Statute of Labourers against the Master, it is a good Bar to say, that a long time before &c. he retained him at D. in such a County &c. *H. 3. H. 6. fol. 31. action upon the Statute. 1.*

Not guilty is no plea in an Action upon the Statute of Liveries, nor in a *Decies tantum*, but he must answer to the Writ, as, that he did not give contrary to the form of the Statute &c. *M. 8. H. 6. fol. 10. action upon the Statute 2.*

It is no Bar in an Action or Information upon this Statute against him who took &c. to say, he did not use it: for yet he shall be punished, by *Hasssey, 5 H. 7. fol. 17.*

In a Writ *De parco facto*, the Defendant said, that the Plaintiff, nor his Ancestors, nor those whose Estate he hath, never had any Park there, nor had any Grant but of the King, &c. And it was held no good plea, without shewing speciall matter that it is inclosed, and justifie: But he may plead not guilty, and give this matter in evidence. *Newton* said, that is to the action, *M: 18. H: 6. fol: 21. Paston* said, that it was no Park at the Common Law, wherfore he shall not prescribe in it.

Upon a *Quare intrusit maritagio non satisfacto*, it shall be a good Bar, that the Plaintiff did not tender him a marriage, &c. And note, that no words do make a sufficient tender without shewing the party, *H: 40. Ed: 3. fol: 6. Action upon the Statute 9.*

In a *Valore maritagii*, it shall be a good Bar against the mean Lord, to say, that he hath detained the Land after his full age, and levied the value: But it is no plea against the Grantee of the King without alledging this detainer to be wholly after this, that the Land was sued out of the hands of the King, for otherwise the King shall be answered for the profits, of what age soever the Heir be, so that it shall not be intended that the Grantee had any to his own use; for the other shall not have an averment that the Land was more worth which the King had, *Tr: 43 Ed. 3. fol: 20. Action upon the Statute. 11.*

In a forfeiture of Marriage, they were at issue upon the tender of Marriage

riage within age, and it was found for the Plaintiff who prayed double damages: But *Hill* awarded but single damages, *Quia damna non dantur per statutum*, and also *Foris-factura quoad damna in duplo non intelligitur* but when the Heirs marry themselves within age; and here it was confessed that he was married at full age, *P:16 Ed:3. action upon the Statute 14.*

In a forfeiture of marriage, the Defendant said, that the Ancestor of the Plaintiff whose Heir he is, did enfeoff *I.* of the Land to hold by paying twelve pence for all services, which *I.* did enfeoff his Grand-father before the Statute to hold of him, &c. and he could not compeell the Plaintiff to answer to the Deed of his Ancestor to *I.* but if he were subject to the Distresse of the Ancestor of the Defendant, he ought to have answered, &c. and issue joyned upon the Tenure, *18 Ed. 3. 18. action upon the Statute 16.*

Upon the Statute of *Merton*, the Defendant said, that he married him-<sup>In forfeiture</sup> self at full age, without that, that the Plaintiff tendred him marriage with-<sup>of marriage.</sup> in age, issue taken thereupon, *Et alii contra, H:14 Ed.3. action upon the Statute 16.*

The Defendant said, that he was born at *D.* and married himself at full age, issue offered, but he durst not demur without traversing the tender within age, and the Venue awarded where the tender was assigned, *Hil: 14 Ed:3. action upon the Statute 17.*

In a forfeiture of Marriage alledged the tender certain, *Ut oportet*, the Defendant said, that he was of full age at the time of the tender: *Alii contra, P:28 Ed:3 fol.92. action upon the Statute 18.*

Not seised of the Land, &c. is no plea; Also it is no plea to say, that the Plaintiff was seised of the Land, and that he might retain it according to the Statute, for he had his choice, &c. But it was a good plea to say, that his Father held of another by priority, notwithstanding the seisure, &c. *T.2 Ed.2. Action upon the Statute 23. Of Priority, 7 Ed.2. action upon the Statute 33. agreeth.*

No plea to say, that the Plaintiff retained, &c. for the reason aforesaid: And also it might be that he was Heir to the Mesn who had no Land, *18 Ed. 3. fol.18. action upon the Statute 30.*

The Defendant said, that he had certain Lands of one *D.* in Knights Service, and that he claimed the Wardship, and had the Wardship of our body, and granted the Marriage to one *W.* who married us to his Sister, &c. And forasmuch as that the Plaintiff might have recovered against him, who deforced him or his Ward, Judgment, &c. and no plea, because he answered not to the Tenure, nor the tender of the Plaintiff, wherfore he did plead as afore, so that the Plaintiff was never seised of the body, nor of the Custody. Issue taken, *Alii e contra, H. 3. Ed. 2. action upon the Statute 27.*

Note, that the Lord who recovers all in Damages in this Action shall not have execution of the Land which was in his Wardship, for the Sta-



tute faith, *Teneat terram quosque*, which is to be understood by way of retainer, and not when he brings his Action, P: 33 Ed. 3. *action upon the Statute* 31.

In a Writ of Ravishment of a mans Wife, and his Goods against two, it is no plea to say, that there was a Divorce made, &c. nor that the woman is dead, nor that one of the Defendants is a woman, 43 Ed. 3. fol. 23. *action upon the Statute* 12. See concerning this 44. *Book of Assise*, P. 13. *action upon the Statute* 22. *agreeth*.

The Defendant saith, that this K. who he supposed to be his Wife, at the time of the marriage, was but seven years of age, so that she could not assent, and said, that she never assented afterwards, so that she was never his Wife; and by the opinion it seemed to be a good plea, for before the assent at age it is no marriage to any intent, for no divorce shall be, and although there needs no new marriage yet it is meet to have words of assent, and those of Matrimony, as, *I take you to my Husband*, &c. Yet Ing. seemeth, that he shall answer to the wrong, supposed if himself hath no right, M. 47 Ed. 3. *action upon the Statute* 37.

Ing. said there also, if the Lord marry an Heir female within age, and she consent not at the age of twelve years, the Lord shall not marry her again.

A. sued a Bill before the Justices of Assises, shewing that he following his businesse before the said Justices, and that one R. assaulted him before the Castell in their presence, and with force and armes took his Wife from him, and led her away with his Goods; and the Defendant pleaded not guilty to all, and was found guilty by the Inquest, and was taken presently: And note, that the woman was of the assent with A. and would not have an Assise prosecuted against him by her Husband, and her, &c. yet the Plaintiff recovered Assise, 39. *Assise* P. 1.

A man was outlawed at the suit of the party in this Action, he was also indicted for the same matter, and outlawed at the Kings Suit, and afterwards came into the Chancery with the party, who acknowledged an agreement made with him, wherupon he had a Charter of Pardon, reciting all the matter: And this was alledged in the Kings Bench against the party, and against the King, but the accessory who was indicted at the Suit of the King (this notwithstanding) was put to answer, 42 *Ass. P.* 16. *Ch.* 15.

*Contra formam Feoffamenti*, against a Prior who distrained him to do suit at his Court of C. the Prior said, that the Plaintiff held of him by doing Suit at his Court of P. and at the desire of the Plaintiff for his ease he did exchange this Suit to the Court of C. in allowance, &c. the Plaintiff traversed the Seisin of the Suit at the Court of P. which was the Issue, M. 3 Ed. 2. *action on the Statute* 24. *vide* the other Suit stood at the election of the Prior, whether he took rent for the Suit upon composition, &c.

A Writ, for that he distrained him to do Suit at the Court of D. against B. and E. they say, that he holdeth of them as of the Dower of G. and the Inheritance

Inheritance of C. by Suit at the said Court, of which the Ancestor of C. was seised before the limitation; and hereupon at issue, *M. 3 Ed. 2. action upon the Statute 25.* and had aid of C. *vide Fitz. Nat. Br. fol. 163.*

It is no plea in this Action, that the Plaintiff gave him no Prohibition, but it is a good excuse to say, that the Amerciament was offered by his Peers, and that he only did execution but as Bailiff, &c. *M. 10 Ed. 2. action on the Statute 34. vide Fitz. Nat. Br. fol. 75.*

*III. Where Statutes made in England shall bind them in Ireland.*

**N**ote by *Hussey*, that Statutes made here shall bind those of *Ireland*, which was not much gainsayd by the other Justices, though some of them were of a contrary opinion the other Term, *M. 1 H. 7 fol. 3. action on the Statute 6.*

*IV. Upon the Statute of Winchester against them of a Town, upon Hue and Cry not pursued.*

**N**ote by *Knivet*, Si he who was robbed, where Hue and Cry was levied, and not pursued, sueth those of the Town (as well he may) for his damages, & recovereth, he shall not have a *Capias ad satisfaciendum* against them, because no wrong is supposed to be in them, but they are charged by a speciall Law, *H. 42 Ed. 3. fol. 11. Execution 34.* He may have an *Elegit* &c.

*V. Where an Action lyeth which giveth Rationabilem partem bonorum.*

**I**N Debt by *W.* and *A.* his Wife, against the Executors of the Predecessor of *A.* Plaintiff, declare, that according to the of the County of *North.* that the Children unadvanced ought to have their reasonable part of the Goods of their deceased Father, that they detain the reasonable part of *A.* &c. The Executors say, that she was married in the life time of her Father, and by her Father, and demanded Judgment, &c. and afterwards aver that this marriage was a convenient advancement, &c. the Plaintiff who is the Husband had no Land, nor yet hath, but after they were at issue, whether she were married by her Father, *3 Ed. 3. Itin. North. Debt 156.*

In



*Action upon the Statute.*

In a detinue by *A.* against the Executors of his father, the Writ alledgeth the Custome of the Realm, that the wife ought to have the third part, the children the third part, and the rest the Executors, and he demands the third part as onely child &c. The Action is not maintainable by Law, by *Berr. and Herle*; and *Berr.* said, the great Charter is to be understood of the proper goods of Infants which were in the keeping of their father &c. *P.17 Ed.2. detinue 58.* but it lyeth onely upon a particular Custome of one County &c.

Such a Writ was maintained upon the Custome of a Countrey, *M. 34. Ed.1. Detinue 60.* and *Malm.* said, that he had seen such an Action grounded upon the Statute of *Magna Charta*, and it was held no plea to say, that the Plaintiff had a sister not named, for if she will not sue, severance—lieth not here, by *Heigham*, but see *H.13 Hen.4. Severance 30.* where two sued an Action of detinue, as heirs for the goods by the Custome of Gavelkind, and the one made default, he was severed, because they might sue severally, *vid.* all agreeing and the writ and the Declaration, *Tr.1 Ed.2. Detinue 56.* the Defendant alledged Land demised unto him by his father, he said, this was for debt, not for advancement, and demurred.

In detinue declared, that the Custome of *Sussex* is, that the heir shall have his reasonable part of the goods of his father, who died intestate, and alledgeth that they are come to the possession of the Defendant, and the opinion of *Thorp* was against him, because he demanded no certainty, and perhaps the Defendant is Administrator, and shall be charged with all to the Ordinary, *Uffer.* this Custome hath been allowed at all times before the Ordinary, *et in Eire P.39 Ed.3. fol.9 Detinue 38.*

The Heir shall maintain such an Action against the wife of his father by the Custome of *Surrey*, which giveth him in every Mannor or house of his father, the principalls in every place, as the best bed, Table, Pot, Plow &c. The Wife pleaded in Barre by the Custome, because that she had a joint estate with the husband, *H.30 Ed.3. fol.2. Detinue 51.*

A woman brought an Action of Detinue against the Executors of her husband, and declared upon the Custome of the Land, that if he have no issue or issue, if they be all advanced, that she ought to have the moyety, he had goods to the value of 1000 l. debt, and died without issue between them, so the Moyety belonged to her, and the Declaration was good without alledging that he had no issue, and if he have, the Executors ought to declare it; and this was to the Action for part, and after they pleaded to the Jurisdiction of the Court, because the matter is spiritual, and they have not yet performed the devises in the Will &c. *M. 30 Ed.3. fol.25. Detinue 52.*

*Uide* such a Declaration, *H.17 Ed.3. fol.9. Responder 15.* and where one Executor shall answer without the other by the Statute, *P.31. Ed.3. Responder 6.* agreeth, and *M.28 H.6 fol.4. Responder 47.* agreeth *7 Ed.4. fol.29.* and the wife had Judgement against all the goods of the deceased, and

and she declared upon the Custome of the County to maintain her Action.

See *Fitzh fol. 122. et Glanville lib. 7. cap. 6.*

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*V I. Action upon the Statute for regrating in Markets.*

**I**N an Action upon the Case, declares that he hath Fair and Market, and how the Defendant bought certain beasts, and sold them again in the same Market without paying Toll: That another Action was depen- in the Common Bench for the same Trespasse is no Plea, *P. 7 H. 4. fol. 44. Action upon the Case 26.*

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*V I I. Action upon the Statute against publishing of News.*

**S**I R Thomas Seton Justice brought an Action against one Lucy, who Scalled him, Traytor, Thief, and Robber, in the presence of &c. the Defendant pleaded not guilty. And note, that false reports &c. whereby discord or scandall may arise between the King and his people, or the great men of his Kingdome, an Action lies, and the Defendant was found guilty and imprisoned, and the Justices advised how to increase the damages, *30 Assis. P. 19. Action of the Case 41.* and he shall be imprisoned untill he have found in Court him by whom the words were spoken, vide the Statute, and the Justices and other men specially named, *2 Ri. 2. cap. 5. West. 1. cap. 33. vide 2 R. 2. cap. 5. 12 R. 2. cap. 11. and 1. and 2. P. and M. cap. 3.*

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*V I I I. Action upon the Statute, that the Sheriff would not set his seal to a Bill.*

**A** Man delivers a Writ to the Sheriff by Bill, and because he refuseth to seal it, others do seal it, and according to the Statute, and now the Sheriff returns *tarde*, and the party prayed to have a Writ to the Justices of Assise and had it, and all the circumstances were found for him by the Jury upon an inquest of office, and dammage of fourty shillings, and would have had double damages, but because none of the Statutes do give it, he is to have the damages given by the Jury, and all this without putting the Sheriff to his answer, *29 Ass. P. 58 Ass. 395. Westm. 2. cap. 39. A. 2. Ed. 3. cap. 5.*



*IX. Action upon the Statute that no man shall ship away Wool but such as shall find sureties to bring in Bullion.*

**A**N Information in the Exchequer, that such a Merchant hath shipped Wools without finding surety to import Bullion for every sack according to the Statute, and a Writ was awarded to the Customer of the Town, and gave him day *sub poena* to bring forth his sureties, and the surety of this Merchant, at which day he made an especiall return to be discharged by the generall words of the Statute, 36 *Ed. 3. cap. 11. Wools 9 12: and 45 Ed. 3. cap. 4.* which grants that no Imposition shall be demanded of the Commons, nor of any sack of Wool, but the ancient Custome of half a Mark, and that no imposition nor charge shall be put upon Wools without the Parliament, and the opinion of the Justices was that by them the first Statute of 14 *Ed. 3. cap. 21.* Custome 1.2. was not repealed, yet the Statute of 11 *Ri. 2. cap. 2.* was also put, 4 *Ed 4. fol. 3. Barre 309. 14 Ed. cap. 4.*

*X. Action upon the Statute, that a man shall not distrain in one County, and drive into another, and upon that, that he shall not distrein in the high street, nor out of his own fee.*

**A** Writ upon the Statute for taking of his beasts at *S.* in the County of *Derby*, and driven to *T.* in the County of *Nott.* the Defendant alledgeth how he holdeth this Land in *S.* of him by fuit at his Court of *N.* in the County of *York*, and that he did drive them by *T.* being in his next way towards *N.* and there detained them untill agreement was made with him, and it was held a good plea, *P. 14 Ed. 3. Bar. 275. & vide 22 Ed. 4. fol. 11.* agreeth, and that the Lord may lawfully drive the beasts to the Mannor, by reason whereof he holds of him in another County, for the Tenant may have notice of the driving, and this was the mischief at the Common Law, and *M. 1 H 6. fol. 3.* agreed *per Curiam*, but *H. 30 Ed. 3. fol. 5.* the contrary was adjudged, and that the Plaintiff recovered damages, taxed by the Court against the Lord who made the like justification of the Mannor out of which &c. in another County, and as to the Case of 14 *Ed. 3.* it was answered, that there the Queen was Lord, who is a person exempt &c. and the Plaintiff recovered, *sed multi dixerunt quod male*, for the Statute speaks onely that the Lord shall be amerced &c. *Distresse 16.*

In a Writ upon the Statute, for that he took his beasts out of his fee, where he was no officer of the King: the Defendant said, how that a *Wisher-nam* was to him directed, by which &c. and pleads this to the Writ, but the

the Court charged it not, but to plead upon the cause of the taking &c. *M. 19 Ed. 3. Bar. 281.*

In an action upon the Statute for taking beasts in the high way for a distresse, and the Writ was at the beginning, as *de communi consilio* so grounded upon the Statute, and in the end said, *contra legem & consuetudinem Anglie*, and this is at the Common Law, so contradicting, but saith, that the Statute made the Law and Custome, by which it is good, also it is not needfull to set down the price, because the Writ alledgeth the taking to be for a distresse, and not that he claims a property, neither is it needfull in the Writ *ad grave damnum & contra pacem &c. M. 19 Ed. 2. Writ 842.*

*Vide 6 Ed. 3. fol. 23.* The Issue was in the like action, if the taking were in the Kings high way, *vide* to what wayes the Statute reacheth.

The Tenant may lawfully rescue from his Lord, which he distrained in the high street, or shall not have action upon the Statute, *17 Ed. 3. fol. 43.*

But it seems he shall not have an advantage of the Statute in a Replevin, because he may have an action upon the Statute, *4 H. 6. fol. 2.*

**X I. Action upon the Statute, that a man shall not sell corrupt victual.**

**T**He Action supposeth, how that the Plaintiff *quandam buttam Rumney de prefato A. bargam. pradiet. A. sciens illam esse corruptam, & non habilem, warrantizabat esse habilem & non corruptam, pro quadam pecunie summa*, and *habilem* was excepted against, because it is with *H.* and taken away; also it is not needfull to alledge the certainty of the summe in the Writ, but in the Declaration, and *Martin and Babington* said, that the Warrant is to no purpose, because an action lyeth without that upon the Statute, and lyeth upon the selling of the servant of the Defendant by his Commandement, otherwise he may traverse the sale, *9 H. 6. fol. 53. Action upon the Case 3. A. 4 Ed. 3; cap. 11. A. 23 Ed. 3. cap. 6. A. 13 Ri. 2. 8.*

**X II. Action upon the Statute, that a man shall not pay a Fine pro pulchre placitando.**

**A** Trachment brought by the men of *A.* against the Prior of *C.* for that he distrained them to make a Fine *pro pulchre placitando* contrary to the Statute, *Anno 13 Ed. 1. Attachment 8 Marl. cap. 11. 1 Ed. 3. cap. 8.*



## *Actions upon the Statute.*

### XIII. *Action upon the Statute of Admeasurement.*

**A**dmeasurement lyeth well against a Lord of parcell of the Town, for a Tenant who is not his Tenant, and it is a good plea to say that he hath a Coparcener and prayeth aid &c. for Admeasurement shall not be by parcells, *P. 32 Ed. 1. Common 29. See the Case and Merton cap. 6.*

### XIV. *An Action upon the Statute that he shall deliver a Copy of a Libell.*

**U**Pon Debate of an Administration, it being severally granted by two Bishops, the one private upon suggestion, that the goods were in divers Diocesses, the other sued a Prohibition upon the Statute to deliver him the Copy of the Libell, and surcease in the mean time out of the Chancery, and for not delivering hereof, nor staying the proceedings, he sued an Attachment upon the Prohibition, rehearsing the Statute against the Officer of the Court, and did surmise in the Common Bench, that he was in danger to be excommunicated, and by advise of the Justices he shall have a speciall Prohibition of the Court upon the Statute, to surcease the suit untill he hath a Copy, because he hath an Action here depending, because he had not delivered it before: So note Prohibition of the Common Bench, having Action depending there for the same cause, or for wrong done unto him for the same matter, *M. 4 Ed. 4. fol. 37. Prohibition 8. 2 Ed. H. 5. cap. 3.*

### XV. *Declaration in an Action before the Marshall and Steward of the Kings house, and Barre therein.*

**N**Ote by the Justices it was declared, that a man shall not have an Action before the Marshall or Steward of the Kings house for Trespass, or upon any Contract made within the verge, but where the one or the other party is of the Kings household, and if he do otherwise, the other shall have an action upon the Statute, *Articuli super chartas cap. 3. 10 Hen. 6. fol. 13. Action upon the Statute 3.* and all that he hath done otherwise shall be null by the Statute.

Action against B. and declares that where none shall be sued in the Marshalls Court, where one party is not of the household, that the Defendant had there vexed him &c. the Defendant pleaded that there is no such Record, the Plaintiff durst not demur, but said, there is such a Record,

## Actions upon the Statute.

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Record, issue taken upon it &c. P. 7 H. 6. fol. 30. Bar. 7. and upon such Issue the Writ shall be sent to the Marshall and Steward, to certify how it was, 10 H. 6. fol. 13. Estoppel 18.

Action upon the Case upon the Statute, concerning a suit before the Marshall &c. and declares that the Defendant sued him there, where neither the one nor the other were of the Kings household, and it was good, whereby the Defendant would have estoppel by the Record of the Court there, which is, *Quod talis sequitur, versus talem de Hospitio Domini Regis*, and it was no estoppel, because he is to defeat the Record by this Action: as the admittance of a suit in the Court of Rome shall not conclude me to have a Premunire &c. Trin. 3 H. 6. 10 Hen. 6. fol. 13. Estoppel 18.

### XVI. Constructions for all Statutes in generall.

**N**Ote by all the Justices clearly, if a Statute be made of ancient time, and never put in ure, yet it is a good Statute, and of effect to be put in execution upon occasion, 11 H. 4. fol. 8. Bar. 186. and therewith agreeth 4 Ed. 4. fol. 3. upon the Statute of Wools shipped, and Bullion imported.

Note, that a Charter of legitimation made to an alien born by Hen. 6 is not avoyded by the Act of Parliament, by which all acts of the said Hen. were repealed by generall words, as it was adjudged in *Bagots Case*, 9 Ed. 4. fol. 2. Denizen. 1. vid. 4 Ed. 4. fol. 3. concerning generall words of Statutes.

The Chancellour said, that a Merchant stranger shall not be bound by our Statutes which are *introductiva nove legis*, but otherwise it is of those which are *declarativa antique legis*, and some say, they shall not be bound but onely by those Statutes which are concerning forfeiture of merchandises, and those shall bind as well aliens, as Denizens, M. 13 Ed. 4. fol. 9. Denizen. 2.

The King grants to the Prior of *Edington*, and his fellow Friars, and their Successours, That when any Tax, Tallage, Tenth, or fifteenth shall be granted, that they, their Goods, Chattels, Lands and Tenements shall be quitted and discharged, and after the Clergy by Parliament grant a Tenth to the King, and the Collectors pray to be discharged for the Prior &c. and notwithstanding that the thing was not actually in the King, at the time &c. and he himself party to this grant, who was one of the Clergy, yet the opinion was, that the speciall grant made before should not be avoyded by the generall words of the Statute, which gives the Tenth of all the Clergy; as those of *London* shall have a Writ of Right to recover Lands in tail, notwithstanding the Statute of *W.* which gives a Formedon, for such a generall thing shall not exclude any speciall, *per Forrester*, but the Statute shall bind all those who are at the Common Law,



## Action upon the Statute.

at the time, and shall not exclude especiall Priviledges, *M. 19 H. 6 fol. 62. Grant 10.*

The Kings grant to the Prior of *Lewes*, that he shall be discharged from the Collection of the Tenths and Fifteenths during his life, afterwards the Clergy by a Parliament Grant to the King a Tenth, Proviso *quod nulla persona Ecclesiastica* be discharged with the Collection, & the Bishop writes to the Prior for the Collection &c. who sends the Kings Letters Patents, and the opinion of *Fortescue* was, that he shall not be discharged, for by this means every one which ought to collect, shall be discharged, and the Bishop charged to collect, which he ought not: *hodie contra, M. 10 H. 6. fol. 12. Grant 11. & vide Tr. 26 H. 6. fol.* it was admitted a good grant.

The King in Parliament grants to *F.* and his heirs the Hundred of *B.* and afterwards by generall words all Hundreds were annexed to the Counties by the Statute, yet such a generall act shall not take away the inheritance granted before, *M. 18 Ed. 3. Petition 1.* See the Statute by expresse words repeals grants of the King of Hundreds for life or otherwise, and after, but the Sheriff had allowance &c. of the form &c. *2 Ed. 3. cap. 13. Sheriff 7.*

*Hugh Despencer.* was banished in the time of *Ed. 2.* by Parliament, and after this banishment was repealed, and afterwards he made a Feoffment to one *A.* and after in the time of *Ed. 3.* this repeal was aniented by the Parliament, and adjudged that the banishment should stand in force, and all his Lands seised, and the Land also of *A.* and the opinion was, that this later Statute should have reference to make void all acts after the first banishment, and note, that this last Statute was made after the death of *Hugh*, yet all good as an attainder of a man after his death by Presentment, *per Scot* is good, *Trin. 15 Ed. 3. Petition 2.*

Redisseisin lyeth not but upon a Plea which commenceth by Writ, and before the Justices, and not upon fresh force in a Town &c. also it to be *per primos Juratores, & alios*, *Merton, cap. 3. M. 14 Ed. 2. Rediss. 9.* and by the Statute of *W. 2. cap. 26.* Redisseisin is given upon recovery by default, *Redic. vel alia modo sine recognit. ass. vel jurat.*

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XVII. Where the Statute shall not extend to all, that is within the expresse Letter thereof.

**T**He Statute of *W.* gives Counter-plea to avouch generally, to say, that the vouchee nor none of his Ancestors had not &c. and saith not, his Ancestors whose heir he is &c. yet if the younger Son be vouched as heir, where his father was seised, the Counter-plea shall be good, if himself had not been seised, because not heir, &c. *P. 12 Ed. 3. Counter-plea de Wencher 71.* *Sbard* said there that the younger son had not an ancestor within.

## Action upon the Case.

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within the entendment of the Statute &c. and he may give the speciall matter in evidence, *vide* 10. Ed. 3. fo. 30. agreeing in all.



## Action upon the Case.

**I.** Where an Action of the Case lyeth against a Sheriff, his Officer or Bailiff, against an Attorney, Escheator, or other Officer, who doth embezel, forge &c.

**J**Une holds, that upon a recovery in *Precipe* against me by the Defendant, where I was not summoned, and the summoners, viewers and perners are dead, I shall have an Action of the Case against the Sheriffe. *Quare* 1 H. 6. fol. 1. *Action upon the Case* 1. the book at large seems otherwise, but 6 H. 4. fol. 3. agreeth, *vide* 26 Book of assise, P. 48. *infra* cap. 7.

*Vide* F. n. br. and C. & quare, for the book seems to be that if the summoners, viewers and perners, be dead the writ doth not lye, see b. 6.

In Trespasse the Sheriff returns a *Non est inventus*, whereby an *alias capias* is sued, the Defendant comes, and saith that he is sufficient, and may be summoned, and prayes a writ against the Sheriffe to answer the King, and him for the falsity, P. 31 Ed. 3. *Process*. 55.

by 1. 50. E. 3. 16 ass. 10. vide 35 h. 6. 46. 4. summons and viewers, and

An Action of the Case against the Sheriffe, who returned 5. *exactus*, where he was but 4. *exactus* 9 H. 6. fol. 60. and 81.

two of the summoners were dead, & one of the viewers, and

Against the Sheriffes deputy, and the Attorney joyntly for embezzelling a record &c. and a Writ of deceit lyeth, and not against the Sheriffe for the imbezeling of his Deputy, H. 19 Hen. 6. fol. 30. and a bill against the *Custos breviarum* for embezeling a Writ delivered unto him, M. 7 H. 4. fol. 6.

no deceit did lye against the Sheriff, for it might be that they which were dead did

If an Attorney or any other sue in my name, without my will I shall have this Action 7 H. 6. fol. 43. *Action upon the Case* 3 *Debt*. *vide* Fitz. N. B. 98.

summon the party.

Note, this difference was agreed T. 15. Car. in *Thurstons Case*, where he that hath cause of Action sueth a man, and imprisoneth him, by reason of which his Creditors come upon him, and he lose his Credit, thus no Action upon the Case will lye against the party who brings the Action, but where one commenceth a suit against another in the name of a vower, and without his privity, this is Maintenance and a licentious act, and an action upon the Case will lye against him for so doing.

So 20 Eliz. Dyer 361. If an Attorney by covenant and fraud, without a warrant appear and confess an action or plead non sum in

A Bill against the Sheriffe in the Exchequer for quashing an *effoyn* of the Plaintiff in a *Replevin*, without the assent of the Suitors, but if

Arctus 10 E. 4. 9 acc.

with



with their consent &c. false Judgement hath lyen 26 *Book of Assise, Pla. 45. Bill 12.*

Where summons were returned in a Formedon, where it was not 26 *Book of Assise, pla. 48. Bill 12.* and this seems brought in the Exchequer upon his accompt, although that the party might have his action of deceit, *Quare, as at Exigent,* if the party render himself and finds sureties, and hath a *superfedeas*, and yet the Sheriff will outlaw him, he shall have an action of deceit, or an Action against the Sheriff in the Exchequer upon his accompt, *M. 53 Ed. 3. Error 77.*

*Vid. 14 h. 7. 10.*

*21 E. 4 1. and 2. 34 h. 6. 6.*

*If the Sheriffe suffer a prisoner to go at liberty, before the Debt be satisfied*

*Assion upon the Case lies, yet the party may have debt against him, if he please.*

Action against the Escheator for returning an office contrary to that which was found before him by twelve men, and shewed the office and the return certain, and it lyeth because here he is not Judge of Record, but officer of Record, *H. 9. Hen. 6. fol. 60. Action upon the Case 6.* so if he return an Office where none was found, *21 Ed. 4. fol. 27. & nota,* this is Law, whether the office be found *virtute brevis* or *virtute officii*, *9 H. 6. &c.*

Petition in Parliament, supposing a false Statute Staple, forged by the Defendant, and this was sent into the Bench indorsed by writ to examine the Major and Clerk of the Staple, and the party, and although there is now no Major, yet if there were at the time &c. he shall be examined, and his examination stand of force, *17 Ed. 3. fol. 49. audita querela 22.*

*Vide Fitzh. fol. 96. B.* that deceit lyeth for forging a Statute Staple.

If an Executor be made a Defendant, and he which was not the Executor confesse the Action as Executor, this Action lyeth against him, *9 Ed. 4. fol. 13. deceit 21.*

**II.** *Where this Action lyeth for disturbing a man to sue in the Kings Court, or in any other Court, or for procuring suit in the Kings Court or any other, or for not holding a Court.*

**A**ction of the Case, that where he cometh by return of a Writ depending against him in the Bench, the Defendant had arrested him &c. was abated for another defect in the Declaration, *7 H. 6. fol. 45. Action upon the Case 4. &c.*

An Action against an Abbot who sued him for Tythes in the Court Christian, where he had Lands given him by his Ancestor in recompence &c. before the memory &c. *M. 8 Ed. 4. fol. 13. Prohibition 9.*

He which had released with warranty in certain Land, procured by collusion one who had right to sue for the Land, this Action lyeth, and in *warrantia Charta* the procurement was found, the Defendant here was outed and traversed it, *34 Ed. 3. fol. 20. deceit 28.*

The Demandant in a Writ of Right in ancient Demesne shall have Action &c. if the Lord will not hold a Court for malice *M. 11 Ed. 2. Assi-*

*on &c.*

on *Ch. 46.* and if a Writ removed out of the ancient Demesne, if the Bailiff yet proceed and give Judgement against him, it seems this Action lyeth, but there it was upon his departure in despite of the Court, 14 *Ed. 3. Action & c. 39.*

*III. Action upon the Case for falsity in bargaining, and where Warranty of a thing sold is materiall.*

**A**ction for this, *Quod vendidit vinum corruptum, & pro quadam pecunia summa, bonum & habilem warrantizabat*, Martin and Babington said, the Warranty is to no purpose, because the Statute is, that no man shall sell corrupt victuall &c. and Martin said, that the Action lyeth against him who commands his servant to sell corrupt victuall, and shall not traverse the selling of it by himself, but where he did not command &c. 9 *H. 6. fol. 53. Action & c. 5. 7. H. 4. 15.* so de pannoranco, drink and meat corrupt *ibidem*, but *Fitzh. fol. 94.* otherwise, and said, that where there is no warranty that he shall make his fences Judges in the Case of wine, as well as where he hath bought a horse, which hath an apparant malady, *fol. 94.*

*Vid. 7 E. 6. Dy. 75. upon a bargain of wax.*

And Bryan said, if a man sell me twenty sheep to kill, if they be corrupt, I shall not have an Action of deceit, if he did not warrant them &c. but if I sell dead mutton which is corrupt, the Action lyeth without warranty, and this by the Statute that no man shall sell corrupt victuall, *per Nele 11 Ed. 4. 6. decept 23.* so of corrupt Wine, 7 *H. 4. fol. 15. Action acc. upon the Case 27.*

*Fitz. n. b. 98. R. acc. 3. b. 7. m.*

If a man sell me cloaths, and warrant every one to be of such a length, where they are not, it hath been said, that Action lyeth, because the length cannot be judged by senses, without collaterall means, but otherwise it is of the colour &c. the warranty is void, if the buyer had his eyes, by *Fairfax*: and Chock said, if a stranger warrant a thing sold by me, it is void: so of the servant who sells for his Master, for the warranty shall be parcell of the Contract (but Covenant lyeth here, if he have done it) and if a man undertake to cure me, and he bid his servant, that he cure me not, the Action lyeth against the Master alone: and the warranty that such seed shall grow, is void, but good that the seed is of such a garden, or Countrey, for this the Bargainee could not know, 11 *Ed. 4. fol. 6. 7. decept 23.* See *Littleton* said, if I be absent from the thing warranted, it is good, although it might be judged by senses, *ibidem*, and 14 *H. 6. fol. 22. Action & c. 9.*

Action lieth against him who sells a horse with warranty &c. which he did know to be diseased in his legs or eyes, *T. 7 R. 2. Ley. 42.*

A man sells wood, shewing him parcell thereof, and warrants the rest to be as good, if it be not, an Action lieth, 14 *H. 6. fol. 22. Action & c. 9.*

A man selleth an hundred surples of Wool with warranty, the warranty



ranty, the Warranty is as well the cause of Action, as the corruption &c.) and the warranty is traversed, *H. 19. H. 6. fol. 49. Action &c. 10.*

*Vid 9 h. 6. 53.  
14 h. 6. 24. 11  
E 4 8. If the  
sale be at one  
time and the  
warranty at  
another time, or  
place, the action  
will not lie*

Warranty made after the Contract is held void to have action of deceit, or this action, although it be by the same person, *5 H. 7. f. 41.* but see *Fitzb. f. 98.* that if the warranty after be by deed, he hath remedy, but that is by Covenant &c.

He that hath taken my horse wrongfully, and selleth him as his own proper goods, and I or another for my debt take the horse in Execution, this Action lyeth for the vendee, *42 book of Ass. pla. 8. Action &c. 42.*

If the vendee of corrupt wine, for good tast and accept it, he shall not have this action, *P. 7 H. 4. f. 15. Action &c. 27.*

*M. 21 Jac. in  
B.R. It was  
adjudged if the  
Manner Lord  
settleth forth  
his Tithes, and  
gives notice to  
the Parson, and  
he will not  
take the Tithe  
away, an action  
upon the Case  
lies against him  
because there-  
by the Land is  
endamaged.*

If a man buy hay of me in a Meadow, and do not carry it away in convenient time, so that it putrifie and corrupt my grasse, I shall have this Action, *H. 13 H. 4. Action upon the Case 48.*

If a man sell me twenty quarters of malt, and convert the same to his own use, it is said I shall have this Action, but *Fineux* said, I shall have an Action of Detinue, *Quare 20 H. 7. f. 9.* and shall recover damages for the misdemeanour, *ibidem*, but if he sell me corn in his Barn, and he convert the same to his own proper use, it is clear the Action lyeth, because it is a thing certain, *Kinsmell*, but in the first it is not certain that I shall have the malt, so no property before the delivery, *20 H 7. f. 9.*

#### IV. The form of a Writ in an Action, and the Pleas to the Writ.

**A** Writ supposing that where a man cometh upon the return of a Writ in the Common Bench, the Defendant arrests him in *London*, and declares that the Defendant arrested him coming, &c. and he sued a *habeas corpus*, and was discharged, and afterwards he comes back again into *L.* and the Defendant arrests him again knowing &c. and he came for his evidences &c. and the Writ abated, because it contained not all the matter, *7 H. 6. f. 45. Action &c. 4.*

A Writ supposing that the King had granted to the Bishop Franck pledge, *et assisam panis*, in all his Lands and fees, and that he was seised of the Town of *Sar.* and was disturbed &c. and the Writ was held naught, because it did not suppose him to be seised of the Town at the time of the grant, although it were in the Declaration, for the Writ shall be as certain as the Declaration, save in the day and quantity of the Land, *per Prisot, M. 38 H. 6. f. 9. Action &c. 14. infra c. 10. 11 Hen. 4.*

A Writ was, that *pro quadam pecunie summa vendidit*, and the certain sum was in the Declaration, and therefore held good, & *warrantizabat habilem* is not false Latine, *9 H. 6. f. 53. Action &c. 15.*

A Writ supposing a Retainer *pro quadam pecunie summa*, good without

out shewing what summe, because the quantity is not materiall to maintain the action, 11 H.6. f.18. *Action &c.* 7. plus infra 16 H. 6. and to this seems to agree 3 H.6. fol.36. and 37. Rolf pleaded over, yet without any summe he took upon him and covenanted void, *ibidem*.

A Writ supposing an *Assumpsit* at London, the Defendant shall say *Assumpsit* at O. without that that at London, good to the Writ., 19 H. 6. fol. 49. *Action &c.* 10. agreeing, with that viz. upon selling and warranting supposed in one County, when it was in another, 14 H.6 fol. 23. *Action &c.* 9.

Another Writ depending for the same Trespass in the Common Bench, is no plea to the Writ &c. H.7 H.4. fol.44. *Action &c.* 26.

Three Joynt-Tenants having a way over the Land of two men, who are severall Tenants, and ploughed their Land severally, so that the way is impaired, the three bring this Action against them both, supposing that they had a way over their Land, and the Writ was held good, 2 Hen. 4. fol. 11. *Action &c.* 24.

A Writ was brought that whereas, *habeat chimin ad Ecclesiam ratione tenure sue &c.* that the Defendant *quendam murum levavit per quem murum chimin*, &c. here non potuit held good, although at first is *habet*, and in the perclose; *habere non potest* (*videntur contraria*) and it was excepted against, because *ratione tenure* might be upon a Lease for years, and then he should have another form of the Writ, removing the Seisin of the Lessor and Lessee, 33 H. 6. 26.

*Vid. 11 b.4. 26.4.E.4.2. 2 b.4.11. 14 b.8.2. If in this case the Action lyeth, or Assise of Nuisance.*

An Action against him who was retained to buy a Mannor for me, is well brought, where the deceit and retenir &c. although that the Mannor be in another County, but the Writ abated, because it supposed a retenir &c. and declared that the Defendant bought the Mannor for himself, and not for the Plaintiff: but in debt, accompt forgery, the Writ shall be generall, the Declaration shall be speciall, M. 16 H. 6. *Action &c.* 44.

The Writ was that the King had granted him certain Land in Ward, and that the Defendant had levied such a summe in certain Lands of the Ward, belonging to the Plaintiff, it seems it abated, because he shewed not in what Lands, but by *Fitzh. Norton* answered that this appeared in the Declaration P. 11 Hen. 4. fol. 64. *Action &c.* 29. *supra Action.* 38 H.6. *Case.* 2.

A Writ brought and declared upon an undertaking for curing a horse, and good, and this Writ shall be *contra pacem*, 43 Ed. 3. fol. 33. 45 Ed. 3. fol. 17-27. *Book of Ass. pla.* 56. but see *Fitzh. fol. 29. E* That this Action shal all conclude *contra pacem*.

A Writ brought for not enclosing Land in one County, by reason of Land in another County, good and well brought, where the Close which &c. *Hill 11 Ri. 2. Action &c.* 36. But covenanting in London to cure in the Strond, and he impaired in the Strond, and cured not, the Writ good in the one or the other, at the Will of the Plaintiff, per *Thirning*, and the issue is, the *venir.* shall be of the one or the other, P. 11 Ri. 2. *Action &c.* 37.



A Writ claiming an estray by Franchise within his Mannor, and claims it not as appendant, nor by grant, and good. Otherwise in a *Quo Warranto*. *Quere*, for it shall be intended to be appendant to the Mannor, although *Stonff* said it might be claimed by usage, &c. but he was compelled to answer, that the Defendant was seised of the moyety of the Mannor with the second stray, *M. 13 Ed. 3. 3. Writ 674.*

A Writ for stopping an hole in such a water, at his weares in *E.* and sheweth not whether the hole were in the Soil of the Plaintiff or of the Defendant, and yet good, but being *vi & armis*, it was abated by the shewing of the Defendant that it was in his soil, *31 Ed. 3. Action &c. 38 Fitzh. fol. 46. H.*

A writ brought, and prescribeth to have strays in his Mannor, and that he seised three beasts for stray, &c. and the Defendant took them, and did not say where he took them, and held good, for it shall be intended to be in the same place, and he suppose an assault made there, and there shall be but one *ib.* in the writ, *31 Ed. 3. Writ 333.*

Declares that by reason of Land, he ought to repair a wall, and sets not down the quantity of the Land, yet good, *29 Ed. 3. fol. 32. Action &c. 50.*

The writ was, *Quod reparare debet aquam in C.* and did not, whereby so much Land adjoyning was surrounded, and said not in what Town the Land adjoyning is, but the word *adjoyning* is as much in effect as *(there)* so it shall be intended in the same Town *P. 29 Ed. 3. f. 32. Action &c. 50. vide Division 10.*

*V. Barre with traverse to the point of the Writ, and Barre without traverse.*

**W**Here one declares of wine sold, it not being good, it is no barre to say that it was sufficient and good, without traversing, without that that it was corrupt, and if my servant sold such wine without my commandement, I shall say generally that I sold it not, and I shall not say, that my servant sold it without my commandement &c. without that, that I sold it in any other manner &c. *M. 9 H. 6. f. 53.*

Action against an Abbot, alledged Prescription, that he shall find a Chaplain four times in the week in his Mannor, and not any Seisin of Masses, because it is not manuel, but he ought to alledge the times certain when the Masses should be. And it is no plea to the writ; that the Abbot holds by such service; so he ought to have a *Cess.* if he traverse not the Prescription, because it may be, that he ought to find two Priests, *H. 22 H. 6. f. 46. Action &c. 12.*

One declares to have a Leet with all profits, fines and amerciaments, if the Defendant shew that he hath used to have the amerciaments of his servants there, he shall traverse without that, that the Plaintiff had al

the

the profit &c. and shal not say without that, that he had a Leet in any other manner; and if the Defendant being amerced for not appearing, alledge that he hath used to be warned by fifteen dayes, &c. here the traverse shall come of the Plaintiff, (*scil.*) that he was lawfully warned, and if the Defendant alledge use to disturb, the Plaintiff shall traverse this also if he will, and in these cases the Defendant shall not traverse, *M. 38. H. 6. f. 16. action &c. 15.*

Action for claiming and lying, in wait to take the Plaintiff for his Villain. It is a good bar that the Plaintiff is Villain regardant to *R. &c.* and that he as servant to *R.* lay in wait &c. without that that he claimed him as his Villain, and shall not traverse generally the point of the Writ, *2. Ed. 15. E. 4. 32. acc. 4. f. 5. action &c. 16.*

*Vide B. Action sur la case 9. 17. E. 4. 3.*

Action brought for corrupt Wine sold, the Defendant said that he accepted it by his taste; the Plaintiff said, that the acception was upon condition, that it should indure until &c. and it not endure, the Defendant said that he did accept it without that that there was any such condition *&c. P. 7. H. 4. f. 15. action &c. 27.*

A Writ against a Farrier for pricking a horse, he said that he did it well without that he pricked him, *46. Ed. 3. f. 19. action &c. 35.*

*Vide F. N. B. 14. H. 6. Action sur le case 8 by June*

An action for not repairing an hedge which he ought to do &c. the Defendant said, that there are straggling Bushes, without that that there was at any time a hedge there, and good, *H. 11. R. 2. action &c. 36.*

*19. H. 6. 47. If a Farrier take upon him to cure a horse, and by negligence or insufficient Medecines kil him, this action lies*

An action for selling me a horse which was a strangers, the Defendant said, that he bought him of a stranger, without that that it was to a stranger at the time of the selling to the Plaintiff, *42. Assise P. 8. action &c. 42.*

An action for a house burned by the negligence of the Defendant, he saith that a stranger entred into his hoftry in despite of him, and by his negligence &c. without that that by his not safe keeping of his fire &c. Said that this is double, but the traverse hath made it good &c. *H. 3. H. 6. Double 31.*

*V I. Where an Action, &c. lieth against him who is retained to do a thing and misdoeth it; or takes upon him to do, and doth it amiss.*

**A**ction for this, that he retained him for a certain sum of money, to be of his Council, for the obtaining of such Lands to him and his heires, for a Lease for years &c. and that the Defendant took upon him to do it, and in deceit of him, discovered his Council, and by his Council one *R.* hath purchased it for years, and though the Retainer and Assumpsit be double, yet he saith that this Action is as a Covenant, and



shall arise upon the whole matter and bargain as it was, and here the Retainer being traversed, shall make an end of all. *H. 11. H. 6. f. 18. Action &c. 7.*

If a man take upon him for money, to travel for me for a Lease, and he labour for himselfe, this Action lieth for misdoing. As if he promise to enfeoffe me, and enfeoffe another, and the sum was put into the Declaration. 3. *H. 4. fol. 14. Action &c. 20.* See, It is said, that upon such retainer and purchase for himselfe, an Action of deceit lieth. 20. *H. 6. f. 27.* but *M. 16. H. 6. Action &c. 44.* is agreed, 13. *H. 7.* and here the assumption is traversable. 3. *H. 7. f. 14.*

In Action upon an *Assumpsit* to cure an horse at *L.* which he did not, it is a good plea, that he assumed at *O.* which he hath done, without that that he assumed at *L.* For it may be that after the curing at *O.* he might come diseased again at *L.* at which time of good will he applied medicines to him, after which the horse died. And if I give one counsel to give a medicine to an horse, which is given him, and he die, no action lieth against me, if I take not upon me to cure him, and traverse it &c. As if I have a malady in my hand, and he put a medicine to my heel, for my hand no action lieth, if he tooke nothing; and for that he did negligently apply a medicine, is nothing to the purpose, without taking, *per Newton* and *Paston* *H. 19. H. 6. f. 49. Action upon the case &c. 10.* and the Writ ought to contain the place of undertaking &c. 48. *Ed. 3. f. 6. Writ 627. &c.*

But see 43. *Ed. 3. f. 33. action &c. 33.* In an action against a Chirurgion for that his Patient died in the default of the medicine; he said, that he cured him as well as he could, without that that he did impaire him. and *Thorpe* said, that a man hath been indicted, that he kild a man through the default of his medicine. It seems the matter shall be tried by Chirurgions, whether the Medicine were contrary or hurtfull to the Disease. And *Quare*, if there be not a difference between a common Chirurgion, and another man who gives Physick, and is no Chirurgion &c.

If a Chyrurgion or Smith &c. warrant to cure, and doth what he can or ought, and doth not cure, yet no action lieth against him. 48. *Ed. 3. fol. 6.*

If a man be retained to buy Land of 7. *S.* for me and 7. *S.* die, he is discharged, and may now purchase to himselfe *per Cotton* *M. 16. H. 6. action, &c. 44.*

*Vide 14. b. 6. &c. Fitzh. fo. 94.* An action against a Smith for pricking a Horse, without undertaking, and he traversed, without that he pricked him &c. 46. *Ed. 3. f. 19. action 35.*

He which took upon him to do a cure for money (for so was the Declaration) gave a contrary medicine, and did hurt, and afterwards applied good medicine and cured, yet an action doth lie, *et sic e contra* *P. 11. R. 2. action &c. 37.*

If he which takes upon him to carry my Horse over the River, surcharge the Boat so that he perish, I shall have this action for this mis-doing, 22.

*Aff. P. 41. action &c. 40.*

So if a Carrier take upon him to carry glasses, and he break them, this action lieth, 2 H. 7. f. 11.

Note in all cases of taking, if it be not for any wages, no action of the case lieth, *Quia nudum pactum*: But it seemeth if he had a Deed, action of Covenant lieth, 3. H. 6. f. 36.

VII. *Where Action lieth for non-feasance, or of the thing which is grounded on Covenant.*

**D**Eclares upon a Covenant to make a stranger release to the Plaintiff, which he did not, action lieth for non-feasance: and if a Smith take upon him to shoe my horse, the action lies as well as if he had pricked him &c. 14. H. 6. f. 18. action &c. 8. So for building or covering a house, if he covenant and do it not: So to plow my Land, and doth it not, or doth it in a time not seasonable, where he might have done it in a seasonable time, 14. H. 6. f. 18. 3. H. 6. f. 36. To set up a Mill and did not. But if my servant denie to go with my Cart, this is mis-feasance, *ibid.*

And note, although I have a Deed of Covenant, so that the Covenant lieth for non-feasance, yet for mis-feasance I shall have this action, 20. H. 6. f. 36.

It was adjudged that this Action lieth not for not building of an House. *Hulls* said, he might have his action upon the Statute of Labourers *M. 2. H. 4. f. 3. action &c. 23.* and by *Vavasour*, 3 H. 7. f. 14. action &c. 20. But note, the Judgement was because it founded in covenant, and shewed none, but it is not law to any intent; for, for not doing the Writ lieth well by *Finenx*, who said, if a man sell me his Land for 20 l. and I pay him, and he will not make me an estate, this action lieth, and I shall not be driven to a *subpoena* *M. 21. H. 7. f. 41. action &c. 45.*

It lieth against him who by prescription ought to finde a Chaplain three dayes in a week in my Mannor, and doth not, 22. H. 6. f. 46. action &c. 12.

If a man by reason of his Mill ought to repair a Bridge, by which I have a way, by reason of my Mannor, to carry victuals and other necessities, and he do it not, so that &c. I shall have this action. So if my Land be surrounded by a Dike not repaired, which he ought &c. *T. 11. H. 4. f. 82. action &c. 30. 45. Ed. 3. f. 17. action &c. 34.* So if he repaire not his inclosure whereby my Land is depastured &c. *H. 11. Ric. 2. action &c. 36.* So for not repairing a Wall or Bank of a River, whereby my Land is surrounded. But in these cases the Plaintiff must suppose speciall damages to himselfe,

*11. b. 2. actions  
action sur le  
case, 36 37.*



himself, as it seems, 29 Ed. 3. fol. 32. *Action &c.* 50. and upon a common Nuisance made, he that hath speciall Nuisance shall have this Action, 27 H. 8. f. 27. 7 H. 4. f. 8. *Briefe* 226.]

It is sufficient for a Chirurgion or a Smith &c. that he did what he could, and it seems that this is issuable 48 Ed. 3. fol. 6. per *Chandish*.

VIII. *Action &c.* against him that maketh or raiseth anything to my prejudice, and where upon a Nuisance done, and where this Action or Assise of Novel disseisin of inheritance.

*Vid.* 27 b. 8. 31.  
27 b. 6. 27.  
10 b. 7. 21.  
*Vid.* 21 b. 7.  
29. 30.  
*Vid.* 4. part.  
89. *Lusterels*  
*Case.*

8 *Eliz.* Dyer  
250. 27 b. 8.  
27. 28 E. 3. *br.*  
*Nuisance* 11:  
*Vid.* M. 39 *Eliz.*  
in B. K. *Giles*  
Case adjudged  
accordingly.  
15 *Eliz.* Dyer  
320. C. 5. part.  
1. & 6.

THE Writ supposeth, that they had ten acres of Meadow, and a way to it over three acres of the Defendants, whereof they were disturbed, and this was by plowing of the Land &c. *Marckham*. If a man raise a Mill or a Dike crosse my way, a Nuisance lieth, and if he plow my Common, I shall have an Assise of Novel disseisin: So here though it be said, that all the way is not stopped but impaired. And if a man turn the water from my Mill, so that it cannot grind so much &c. I shall have an Assise, not this Action, and if I have Estovers, and he cut all the Wood, I shall have a *Quo minus* (*vide* 4. Ed. 4. f. 2. that this *Quo minus* is an Action upon the Case) and by *Thirn* If I pull down the Nuisance done to my Land, I shall not have an Action upon the Case, because none was given, and the Writ abated, M. 2 H. 4. fol. 11. *Action &c.* 24. but *Prisot* said, that for straitning of a way, an Action of the Case lyeth *Quare arctavit*, and if all the way be stopped this Action lyeth, and if by the tenant &c. Assise lyeth, 33 H. 6. fol. 26. *Action* 31. *vide* accordingly for water stopped, and not all, this Action lyeth, and if all be stopped, an Assise of Nuisance lyeth, 14 H. 8. f. 38. &c.

If a man grants me yearly hay and straw for two kine in the winter, in his house for life, and I am seised and disseised, I shall have this Action, and not an assise per *Moyl* and *Littleton*, P. 4 Ed. 4. f. 2. *Action &c.* 17. this was the opinion of the Justices there.

Action for this, that he is a Bailiff of an hundred, and ought to have of every Brewer which breweth, which selleth three gallons of the best Ale for 7 d. &c. and he brought the Action against many, and prescribed in it, and it was holden, that for this he could not have an Assise, because he had not the Freehold, but the use of the office for a time, and therefore this Action did lie, *Trin.* 19 R. 2. *Action &c.* 51.

Action brought for setting up a horse mill, whereby the Tenants and resiants do grind with the Defendant, who time out of mind &c. ought to grind with the Plaintiffe, and it was holden, that there was no cause of Action against the Defendant, 22 H. 6. f. 14. yet to set up a fair, in nuisance of my fair, is good cause of Action, and it is inquirable at the Sheriffs turn &c.

And

And if one stop my light, Nufans lieth &c. 22 H.6. f. 14. *Action &c.* 11. and agreed that no action for the setting up of the Mill lieth, 11 H. 4. f. 47. unlesse it hinder my water, or in such a manner annoy me, or if it disturb my customers for coming to my Mill, Fair or Market, then this Action lieth, 11 H.4. f. 45. 9 H.6. f. 45. 41 Ed. 3. f. 24.

A Schoolmaster brought an Action for this, That whereas the Collation of Schollers to learn Grammar belonged to the Abbot, who appointed him &c. The Defendant had there set up a School, whereby his Schollers went thither, &c. this was *damnum sine injuria*, and so no cause of Action, which it had been, if it had been an University incorporate, *per Hanc &c.* H.11. H.4. f. 47. *Action &c.* 28.

An Action upon the Case for not making a Bridge, Dike &c. but for breaking a Bridge, or stopping the water, so that I lose my profit, Nufans lieth, 11 H.4. f. 82. and 14 H.8. f. 38.

If a man in his own ground levy a Nufance to my ground, I shall have a Nufance or this Action, as it seemeth, but not an assise of *Novel disseisin*, nor Trespasse *vi & armis*, but where the Nufance is in my ground, P.31 Ed. 3. *Action &c.* 38.

Two Joynt-Tenants have a gutter, which they ought to repair, and the one of them breaks it, so that the other is dampnified by the breaking thereof, he shall have this Action, H.2 H.5 f. 3. *Action &c.* 22.

So upon a Lime Kiln set up, and the place spoiled, one Tenant in common shall have this Action against the other, 13 H.7. f. 26.

*IX. Where an Action &c. lieth against him who disturbeth me by hindring things to come to my Fair, or from distreining.*

**I**F a Miller will not suffer me to grind my corn without payment of Toll where I ought to grind Toll-free, I shall have this Action, and if he take Toll of me, I shall have an Action of Trespasse *Quare vi et armis*, or I may have a *Quod permittat* against his Master, *per Thorp*, 41 Ed. 3. f. 24. *Action &c.* 31 *Fitzh.* thinks that I shall have a generall Trespasse for the Toll taken, or an action upon the Case, or a Writ to the officer out of the Chancery to suffer me to grind, f. 94. F. and see 29 Ed. 3. f. 18.

Trespasse, *vi et armis*, for hindering people for coming to a Fair, whereby he doth lose his Toll &c. *quare.*

Action upon the Case lyeth for taking Toll of my Tenants in a Fair, where they ought to be Toll-free, 43 Ed. 3. fol. 29. *Action &c.* 3. *Fitzh.* fol. 94.

Action brought and lyeth, for that he disturbed one from holding a Leet in his Mannor, and for disturbing his Servants from gathering tithes, or for disturbing people from coming to do their offering at his Chappel, & for taking his Servant out of his service, three writs in *Fitzh.* fol. 94 H 19.



*Ri. 2. action &c. 52.* So if one disturb my servant in gathering my toll in the marker, &c. and see the form of the Writ and Declaration where one disturbs *Division 10. cap. 4. 9 H. 6. f. 45. Count. 18.* and the Writ was *Viet armis*, so it seems a general Trespass, although the book speaks of an action of the case &c.

If I ought to have amends for the breach of the peace within such a Fee, & a stranger distrains the Tenants for this amends, if they be Free-holders, I may distrain them, and shall not have this action, for it is no disturbance to me, but if the distress were demanded of his Villains, there the action would well ly, *13. Ed. 1. Leete 12. vide 43 Ed. 3. fol. 29. 48 Ed. 3. f. 17.* Covenant brought by a Mayor and Commonalty for taking toll of one of the commonalty, was good, although the party might have his action of Trespass, *48 Ed. 3. fol. 17.*

### *X. Declaration in an Action upon the Case.*

**A** Declaration to find a Chaplain to say Masse at certain dayes, how it shall be, *Divis. 5. cap. 3. 22. H. 6.*

A Declaration for burning a house by his negligence, *3 H. 6. 2 H. 4. fol. 18. N. parte 13. ac.*

A Declaration to have a Way appendant to his Mannor over such Bridge, and claimeth not to carry &c. from his Free-hold, nor from any other certain place, and good, *11. H. 4. fol. 82. action 30.*

A Writ, supposing the Defendant did disturb him to hold a Faire by three dayes, and declares by two whole dayes, and the afternoon of one day at first, and the forenoon of another day at the end, and holden good, because it was upon the matter three dayes, *P. 16. Ed. 2. action &c. 47*

A Declaration upon disturbing one in taking Toll of every Wayne which commeth by prescription, good; *non sic*, if he claim this as parcel of the Faire, for Toll is not but of things sold, if not by custome; and a Declaration of seisin of a Fair, *cum omnibus ad hujusmodi feriam spectantibus*, is good, and because the Writ was brought for disturbing him in the taking of Toll of *T.* for a horse bought, so as it was of a thing certain, it ought to be set down of whom *T.* bought the same. But if the action were generally conceived for not suffering the people to come to his Fair, this is good without setting down any thing bought or sold &c. and the whole was abated, because the Declaration was ill in part, *viz.* because it was not set down of whom he bought the horse, *9. H. 6. f. 45. Count. 18. 30. Aff. 20 H. 7. fol. 1.*

XI. Where action &c. lieth for slander, or defamation, or for claiming one as his Villaine, and where damage without injury.

It was said that action lieth not for claiming one as a Villain, and so publishing, and lying in wait, without saying over and above, *Quod in tantis insultibus, & affrais circa negotia sua ire non est ausus.* P. 2 Ed. 4. fol. 5. action &c. 16 per Lagon it seems that this allegation over is not traversable.

An action was brought for calling a Judge of the Common Bench, Traytor, Thiefe, and Robber, in the hearing of the Treasurer &c. good, and it was tried by the Attornies of the Bench and Exchequer, 30. Book of Assise, p. 19. action &c. 41. see the Declaration there.

If one say to me, that another comes after me to kill me, by reason whereof I flye away so hastily that I kill my horse, no action lieth upon this, *quia damnum sine injuria*: but if in truth one did lie in wait to beat me going to Westminster, so that I dare not go thither about my business, action lieth per Jenny, but of a doubt without cause, no action 17 Ed. 4. fol. 4. and Fairfax said there, that a man shall have an action for threatening to beat him by a writing if he came out of his house, although he speak not to him. But Nedham and Billing. Justices seemed to hold, that for claiming one as a Villain, and for lying in wait, so that he dares not &c. no action lyeth. They also said, that no action lieth for calling me Thiefe or Traytor, but they would advise thereon, 17 Ed. 4. fol. 4.

No action lieth for calling a man Heretick, because it is triable only by the spiritual Law: otherwise of bawdry, but adultery it all be tried there onely, but to call me Thiefe or Traytor, action lieth here, 27 H. 8. fol. 14.

In an action for calling one Thiefe, he declared of such a Felony certain, 27. H. 8. fol. 11: and 26 H. 8. fol. 9. But Walshe Justice said, that action lay for calling one Traytor, without any such specialty alledged, and 30. Book of Assise P. 19. and it is not excuse to call one Thiefe, because the common fame is such, 26 H. 8. fol. 9.

30. Ab. 19.  
Vide 28 b. 8.  
Ab. 26. 44 E-  
lix. Dobbins et  
Franklyn's case  
C. 4. part. 16.

It was agreed in the Kings Bench, M. 9 Eliz. Regine, that an action lieth not against him that calls me Thiefe upon the Report of another. As if he said that J. S. said that I am a Thiefe, and stole, &c.



XII. *Action upon Baylement, and where against the first Bayle, and whether he shall have this Action or detinue upon lending or Contract.*

**A**ction for this, that he delivered his Goods to T. who delivered them to the Defendant to the use of the Plaintiff, and the Defendant had them. *Bryan*. If I deliver my horse to a Smith to shooe him, and he delivers him to another Smith who pricks him, I shall have my action, but not against the second Smith, *see his*: but the other Justices were of a contrary opinion, 12 Ed. 4. fol. 13. *Action upon the case* 19.

Action upon the case brought upon delivery of a horse for safe keeping for a certain sum, and he killed him &c. The Defendant said, that at another time the Plaintiff brought his action of detinue for the same horse, where he waged his Law, whereby he shall be barred now by *Littl. and Penney, Cawsey contra* 12 Ed. 4. fol. 13. *Estoppel*. 78.

Tenant for life, the remainder in tale, if the Tenant burn the Deed being delivered unto him, he in the Remainder shall have his action upon the case, 9 Ed. 4. fol. 52. *per Brian Detinue*, 27.

And note that upon bayment of a horse, detinue lieth, but for misusing him, action of the case, and *Brian* seemed to hold, that to break a Ring of gold, which he had given to keep, the property not being altered, so no action upon the case, but of detinue lieth. For he may recover the same thing. *Gatesby*, he may have the one or the other action; but if I deliver cloath, and he cut it, and make Garments &c. now the action of the case lieth, because he cannot recover the same thing *per Choke*. And *Brian* took it for a Rule, that one shall not have an action upon the case, where he may recover the same thing &c. 18 Ed. 4. fol. 23.

Where sheep are delivered to keep, and he suffereth them to be drowned by negligence. So where one delivers a Chest to keep, which is lost or broken, this action lieth *per Tomisend*, H. 2. H. 7. fol. 11. So if I do deliver a man a horse to ride to York, and he ride him further, this action lieth, *ibidem*.

Action brought against one for breaking of a Bag or Chest with money delivered unto him to re-deliver, or deliver to his Testator &c. and it was broken by the Defendant, and he converted the money to his own use. It is sufficient for the Defendant to traverse the conversion to his own use, M. 20 H. 7. fol. 4.

If I deliver money to my servant to discharge an Obligation, which he doth not, so as the Obligation is forfeit, although here an action of detinue or account lieth, yet I shall have also this action by reason of the forfeiture, *per Fromick &c. Quere*, if he shall not recover damages for the misdemeanor in the detinue brought &c. M. 20 H. 7. fol. 9.

Detinue

Detinue lyeth not for Toll, because there is no contract, 20 H.7 fol.1.  
but for selling without paying Toll, Action upon the Case lyeth, P.7 Hen.  
4. f.45. *Action &c.* 26.

**XIII. Action upon the Case for menacing to distress my Tenants  
or my self, or my men, or villains.**

**L**itleton saith, that if a man saith to me, that if I will not pay him  
20 l. he will take my goods, and I pay him for fear, yet he shall be  
condemned as an extortioner, and I shall have an Action upon the Case, but  
if a man take my beasts untill I make a Fine, I shall have an action of  
Trespasse &c. *Quousque finem &c.* Danby agrees, and if threatned to be  
beaten, an action of Battery, M.7 Ed.4 fol.21. Barre 91. See the diver-  
sity between this Case and 17 Ed.4.

Action lyeth not for menacing my Tenants at will, if I do not also sup-  
pose, that thereby they are departed &c. 9 H.6 fol.8. *Action &c.* 21. but to  
threaten to sue them by Law for his Right, is no cause of Action, but may  
be well menaced, &c. if it be not of life or member, 9 H.7 fol.8. 21 H.6.  
fol.29.

An Action declaring of a battery of his villains, so that they departed  
from his Lands, H.31 Ed.3. *Brief* 333.

**XIV. Where an Action of the Case lyeth for burning a house.**

**I**T is the Law of the Land, and the common Custome of the Realm,  
(and he must declare) that every man shall keep his fire, and that he  
shall answer for the negligence of the servant or hosteler, and *Marck-*  
*ham* was of opinion, that I shall answer for him that comes into my house  
by my leave or knowledge, or into my Hostry, but if he come in against  
my will and set fire on my house, so that it and other houses be burned,  
there lies no Action against me, 2 H.4 f.18. *Action &c.* 25. it was granted,  
that if a stranger come into my Hostry, and hath fire, and by his negli-  
gence burn &c. that this Action lyeth not, as it doth if he enter against  
my will, H.3 H.6 f. *Action &c.* 31.

Upon a sudden fire in my house, kindled without any cause known, by  
which my Neighbours house is burned, there lyeth no Action against me,  
42 Book of Assise, P.8. *Action &c.* 43.



**XV.** Where an Action of the Case lyeth, and not Trespasse vi & armis, because the Defendant came to the thing by the act of the party, or lawfull act, and where it lyeth, because the Plaintiff had not an estate to maintain his Action for recovery of the Land or the thing it self.

**I**F Tenant by Elegit held the Land after the tender of the money, and cut trees, this action lyeth, for it lyeth not in accompt, and Trespasse lyeth not because he in by Title, 21 Ed. 3. f. 16.

*Vide C. 5. part.  
13 the Comm-  
te/s of Salops  
Case.*

*2 h 6. 27. F. N.  
B. 36. F. acc.*

For wast done by Tenant at will, action upon the Case lieth per Brown, 14 Hen. 8. f. 12. & c. vide Littleton in chapter Tenant at will, that Trespasse lyeth.

Action lyeth for an Incumbent who is admitted and instituted against the Patron who presented him, and the Archdeacon, if he will not induct him as another is inducted before him, Tr. 26 H. 8. f. 3.

If the Lessor ouste the Executors of the Lessee of their term, they shall have a speciall Action upon the Case, per Fitzh. f. 92. G.

**XVI.** Where an Action of Case shall lye for taking an estray.

**F**Or taking an Estray, which I have seised within my Mannor, Action upon the Case lyeth, H. 31 Ed. 3. brieve 333. M. 13 Ed. 3. writ 674.



## Assise.

**I.** Where an assise shall be awarded, and where not, and where at large, and where upon the Title.

**V**Pon a Release pleaded in an Assise with witnesses, this being denied, Proceffe was awarded against the witnesses, and at the day the Tenant came not, no continuance was made although the Plaintiff prayed it, but the Assise awarded in point of Assise, without regard had to the Plea of the Tenant, or to the Proceffe against the witnesses, 8 Book of Assise P. 9. Continuance 9.

So if upon an Affise adjourned for forrein release pleaded, the Tenant maketh default, the Affise shall be remanded to inquire at large, for upon the matter the ouster is confessed, 11 Ri. 2. *Affise* 72. And although the Plaintiffe would release the damages to have Judgement, yet he shall not have it without enquiry at large, *Tr. 30. Ed. 3. F. Affs.* 100. but if the release had been found false, then releasing damages he should have Judgement, or otherwise a Writ to inquire of damages. *P. 22 Ed. 3. F. Affise* 125. and 8 Book of *Affise* p. 15. *Affs.* 190. *Divis.* 22. & *Divis.* 50. and 34 *temp. Ed. 1.*

In an Affise the Tenant said that *A.* recovered against him in a *dum suit infra statem* of an elder date by a *nihil dicit*, and prayed that his plea might be entred, yet the Affise was awarded. *Quare* if it were because he pleaded the Record to the Writ, and shewed it not 22 *affs. P. brief* 758. where the Tenant recovered alone in Right brought by himself against the Plaintiff in the Court of the Lord, the affise was awarded, because it was not *sub pede sigilli* &c. 28 *affs. P.* 14. *affs.* 266.

In an affise against *A.* and *B.* *A.* by his Bailiffe pleads to the Affise, *B.* pleads a Fine in Barre, the Plaintiff chooseth *A.* for his Tenant, who comes in person, and pleads the same Fine, and a demurrer was if he shall have the Plea after the Affise awarded, upon the Plea of his Bailiffe, and the Affise is awarded. *Wilby*, this is error, for the demurrer ought to be determined before the Affise awarded, yet Judgement was given upon the verdict, for by the Affise awarded, the Justice of Affise have forejudged him of the Plea upon which the Demurrer was, 20 *Ed. 3. Affs.* 123. 20 Book of *Affs. P. 6. Action* and 48 *Ed. 3. fol.* 7.

In an affise against *C.* and *D. de libero tenemento* in *Everwick*, and made complaint of an officer, against *C.* it was returned *nihil, nec est inventus*, and it was held that upon this return the Affise was awarded, *D.* sets forth that the Office is removeable, and in divers Counties at the will of the King, yet the Affise was awarded, because it was no Plea, *M. 7 Ed. 3. F. aff.* 135. and here, and in every Case where the Affise is to be awarded by default, the Plaintiffe ought to make his Plaint for the information of the Court, because the Plaint is one of Rent and of Land &c. and so in *Dower*, 38 *H. 6. F. aff.* 23.

In Affise against *J.* and *M.* his wife, *P.* and *W.* *J.* and *M.* come by Attorney, *P.* and *W.* by Bayliffe, who for *W.* say, that the Land descended unto him from *S.* his father, so he was in without wrong, and for *P.* they say, that the father of *W.* died, *W.* being within age, and the Lord seised him and granted him the Wardship, *J.* and *M.* claim as the dowry of *M.* of the third part of the inheritance of *S.* father of *W.* and of the assignment of the Lord, and undertook to attend &c. now first the Affise shall be awarded to enquire of the Disseisin, and of the other Pleas, and then to inquire whether *J.* and *M.* hold the third part by the Mannor &c. *T. 13 Ed. 3. aff.* 90. *vide Divis.* 49.

The Bailiff said, that an Affise was purchased, pending another Affise by



by the same Plaintiff held that he shall not have the Plea, whereupon the Assise was awarded, *H.8.Ed.3.fol. Assis.140.*

Where Bailiff in an Assise of Rent pleads out of his Fee, the Assise shall be awarded to inquire thereof *25 Book Ass. P.6. Assise 232.*

In an Assise by an infant, the Tenant pleaded Release of the Ancestor with warranty by Fine, it was held that the Infant should thereto answer, and that the Assise shall not be at large, because he shall not inquire of the circumstances of a Record which he shall not find. *Yalverton*, the circumstances shall not be inquired of, but it is to be considered, whether they shall inquire of other Titles in the advantage of the Infant, *22 H.6.fol. 51. Assise 12. vide 8 Ed.2. Ass.414.* where the Assise was awarded upon the Title made by the Infant against the Fine.

And where the Infant was put to answer to such Fine, and made Title by feoffment of the conusee to his Ancestor averred that he died seised &c. now it was held that the Assise shall be at large, but his Title shall be entred and inquired, yet if this Title be found against him, and another Title found for him, he shall recover *per Curiam* *28 Book of Ass. P.6. Ass. 263. vide Divis.9.cap.7.*

A woman brought an Assise of Rent, and made Title by recovery in Dower against his Father by default, The Infant said, that his father had nothing but in tail, and died seised, and as to the recovery, he pleaded that they were never married, and the Bishop certified that they were married, now he shall not plead a new Barre, but the Assise shall be at large for him, and this shall acquit him of the Disseisin, *28 Book of Assise, pla.52.*

In an Assise of Rent, the Tenant pleaded to the Assise, it shall not be awarded untill the Plaintiff hath set down what Rent it is &c. *26 Ass. P. 6. Ass.234.* and if he saith that he holds at will, the Assise shall be awarded, as it shall be upon default, *ibidem*, and *15 Ass. p. 4.* upon default the Plaintiff cannot have an assise, without shewing what Rent it is &c.

In an Assise, the Tenant pleaded a Fine of his Ancestor &c. that afterwards the same Ancestor by Fine released with warranty to one G. and died, the Tenant demurred and the Assise awarded, *29 Ass. p. 1. Ass. 275.* So if the feoffment of the Ancestor be pleaded in Barre, and the Plaintiffe pleadeth a Discent afterwards, and thereupon the Tenant did demurre, *7 H.6.f.42.*

In an assise the Tenant pleaded in Barre, the Plaintiffe made Title, and thereupon it was adjourned into the Common Bench, and did hang there untill the end of the Term. *Babington*, If the Defendant demanded come not, the Assise shall be awarded at large, for where a Barre is pleaded, and the Plaintiffe maketh Title, if the Tenant demurr thereupon, he hath relinquished the Barre, and then upon his default the Assise shall be at large, but where an Assise of Rent is adjourned upon the Title, and the Law adjudge against the Plaintiff, now although the Plaintiffe come not, the Plaintiffe shall not have an Assise, *M. 3 H.6. fol.*

*Ass.3.*

Where

Where a sufficient bar is pleaded, and the Assise is awarded without injury thereof, this is error: as if in an assise of Rent the Tenant saith that he is Lord; and that the Plaintiff is mesne, and that he took so much of the Rent of the Plaintiff, as of his Tenant &c. and because he said not that he took the same rent, the Assise was awarded, but this is error, 50 *Ed. 3. f. Assise 68*. But where a good bar is pleaded, and the Plaintiff makes title, and the Plaintiff saith, that the Assise came upon the title, and this is found, there shall be no further inquiry, 6 *H. 7. fol. 2. vide Division 47*.

In an assise after bar, and for replication in the Kings Bench in *Suff.* the bench came in *Midd.* now the Tenant demanded Judgement, because the assise is sealed, and the original shall not be sent out of the Bench, but it was holden that an assise shall be awarded upon a *Nihil dicit*, p. 19 *Ed. 3. Ass. 84.* and 19 *Book of Ass. P. 4. and 5.*

In an assise of Land and Rent, the Tenant pleaded to the Land, that he was never seised, and to the rent, that it issued out of the same Land, and the Plaintiff being an Infant, was not put to answer, but the assise at large shall inquire of all, and of the circumstances, p. 11 *Ed. 3. Ass. 86*. So where an Infant is demandant, and the exchange of his Father is pleaded, the assise was taken at large, and found that he exchanged not, and moreover, that the Infant Plaintiff was not at any time seised &c. and yet the Infant shall recover, for the Tenant who pleaded out of the point of the Assise, shall not take advantage of other matter. Also the inquiry at large is all in favour of the Infant, so they shall ayd him, but shall never do him hurt, *M. 7 Ed. 3. fol. 71. Assise 139*.

In an Assise the Tenant pleaded a Recovery against the Ancestor of the Plaintiff, and said that another Ancestor died seised, and the Land descended unto him against whom &c. who died seised, and the Land descended unto us, the which matter &c. & *predict Def. similiter*, now it was holden because the Defendant had not answered unto the title, but, *et predict. Def. similiter*, this is as no rejoinder, whereby the Assise shall not be taken upon the title, but in nature of an Assise at large, by which the title is not confessed. And if the Assise finds the doing of the Ancestor hanging the Writ, and Judgement be given, yet his Heire shall not avoid this without error, and the Tenant shall have advantage thereof. And if another good title had been recorded for the Plaintiff, he should have recovered: and note, that it is to be observed when the title is made without traversing the bar. *Pigor.* It seems otherwise in reason, if he had traversed the bar. 28 *Book of Assise p. 32 Ed. 3. Ass. 99.* and hereto agreeth, whereupon pleading the Bar, the Plaintiff makes his title, and that not traversed the Assise shall be at large, 28 *Ass. p. 48. vide Divis. 23.* and where a sufficient bar is pleaded, as a recovery against the Plaintiff, and he make an insufficient title, as that his Ancestor died seised, pending the Writ, or after the Writ, and the Assise taken at large without rejoinder, yet they ought to inquire of the bar pleaded, as well as upon the seisin and disleisin.



disseisin, and after recovery pleaded, seisin and disseisin shall not be found without saying how it came, *Co. 28 Ass. Pla. 17. Ass. 267.*

In an Assise by an Infant, the Tenant Pleaded the Feoffment of the Ancestor with Warranty, the Assise was awarded at large, and that found by disseisin, *16 Ass. P. 9. Assise 207.* and error upon a devise pleaded by the Ancestor of the Infant in and proved there, and proclaimed to put the Infant to answer thereunto without taking the Assise at large, *37 Assise. P. 5. Assise 328.* But the Infant was put to answer to a Lease for years, pleaded to be made to his Father by deed. But the Assise awarded *32 Ass. p. 6. Mord. 31. 40 Ass. P. 34 Assise 342. 39 Ass. p. 3. 46 Assise P. 13.* the Infant shall not answer to the Deed, but there the Deed was insufficient.

In Assise upon bar pleaded, the Plaintiffe made his Title by Lease of the Tenant for life &c. upon which the assise was awarded, now because the title is not answered nor traversed, the assise shall be at large, and if another title be found for the Plaintiff, he shall recover. In like manner other matter found for the Tenant shall be good, as the Lease found upon condition, and that he entred for the breach thereof &c. upon this the Plaintiff shall be barred, al though the Tenant plead another barr. *38. Assise P. 48. Assise 373. Plea 17. and 17. Assise p. 18. Shard agreeth. Wilby,* the Assise shall be there upon the Title, and upon the seisin and disseisin; but if the Title were traversed and found, they shall not enquire of the seisin, but of the disseisin and damages *Title 9. vide Divis. 2.*

An Assise against Husband and Wife, who confessed the ouster by plea, and upon default of the Husband the Wife was received, and pleaded the same Plea, and it was found against her, yet the assise shall be taken of the seisin or disseisin &c. and thereupon this being found, no disseisor named, the Writ abated. *Belknap.* If in an assise brought against two, the one confesseth the ouster, and the other pleadeth to the Assise, and he is found Tenant, and that no disseisor is named, the Writ shall abate, and the plea of a stranger shall not hurt the Tenant, *44 Ed 3. fol. 23. Assise 58. 11 H. 4. fol.*

In an Assise the Tenant made his title as Heir, and that the Plaintiff is the son of 7. the son of our Father born before the espousals &c. the Plaintiff saith that his Ancestor was seised, and the King supposing that he had forfeited for treason seised, and upon his death we have Livery because found no Traytor, the Tenant demurred to this, and the assise awarded in point of assise, and upon the whole matter found, the Plaintiff recovered *M. 2. Ed. 3. fol. Assise 170. 2. Ass. p. 9. 29. Ass. p. 1.*

Upon an insufficient bar pleaded the Plaintiff shall have an assise at large, *11 H. 7. fol. 28.* So where they demur upon a bar, and upon adjournment, this is judged no bar nor estoppel, *39. Ass. p. 3. 46. Ass. p. 13. vide Avowry Divis. 44. and 38.*

**II.** *Where a man shall recover an Assise by release of damages without enquiry of the seisin or disseisin, and where it shall be in right of damages.*

**I**N an Assise against the Husband and Wife, and *T.* the Husband and Wife pleaded a recovery, *T.* pleaded to the assise, they faile of the Record, the Plaintiff recovered damages and seisin of the Land without taking the assise against *T.* 44 *Ed. 3. fol. Ass. 57.* But if the Husband had made default at the day, and the Wife had been received, although she knew nothing to say in bar, yet the assise shalbe taken at large. So where the infant failes of the Record, *M. 14 Ed. 3. Assise 110.* agreeth, that by failer an Infant shall not be an attain, a Disseisor without Verdict of assise, 36 *Ed. 3 Ass. 443. vide Divis. 1. and 22. and Divis. 9. failer in mortd.*

Upon Record of a *Retraxit* pleaded, and day given over to have it at the day, in the bench he failed, because the Justices found it not, the Plaintiff released damages and had Judgement 15 *Ed. 3. Ass. 96.* So if the Plaintiff upon the bar makes title upon Record, and at the day brings it, the assise shall be in right of the damages 29. *Ass. pla. 1. Assise 275.*

And where a man shall have Judgment without release of damages. *Vide Divis. 1. cap. 2. 30. Ed. 13. Assise 10.*

In an assise against Husband an Wife, who plead a Record and faile, she being received, the Husband shall not be said to be a disseisor by the failer: and if the Wife plead a Record and confess the ouster, yet no Judgment shall be upon this found against her without verdict of the disseisin. But if in a *Precipe* she be received upon the default of the Husband. *Vide le Diverste H. 11 Hen. 4. fol. 51. & vide 26. Assise pla. 35.* and if she plead the Deed of *A.* and it is found against him, and moreover that the same *A.* held joyntly with the Wife, and that she survived, now she shall recover and bar the Plaintiff 39. *Ass. p. 16. Assise 327.*

If a man pleadeth a Deed in Bar, and confess not the ouster, and after waves his bar, the inquiry shall be only of the seisin, and upon finding thereof the disseisin shall be adjudged by the Plea, *M. 13. Ed. 3. Ass. 117.* and this may be, be it an Assise of Rent or of Land.

And it is said, that where upon a bar pleaded, and title made, and found, the inquiry shall be only of the seisin and damages &c. It seemeth this is understood in right of damages, 17. *Ass. pla 18.*

But see where the Deed is pleaded in bar, and the Plaintiff makes a title, by which he waves the bar, and alledgeth the Land to be in another Town, because he would say nothing else, the assise was awarded, and it was there said, that when the Tenant waves his bar *Parn.* he used to take the assise for the damages, 1 *Ass. p. 17. Ass. 181.* But other say, that the assise shal be at large, if he wave the bar and plead to the assise &c. *Vide 11 Ass. pla. 23.*



In an assise against the Husband and Wife, and T. the Wife pleads to the assise, the Husband takes the whole, and voucheth the same T. who warrants and pleads a Record and fails, now the Wife may pray receipt, upon default of her Husband, for he is not out of the Court, but shall have challenge to the assise, and the assise shall enquire whether he be a Disseisor, 16 E.3. Receipt 104.

The Tenant pleads a Recovery against T. in Error, and that he entered upon the Plaintiff ter-Tenant, without a *Scire fac.* by which the assise was awarded in right of the damages, 28 Ass. pla. 11. aff. 168. Vide De vis. 28.

III. Where Assise shall twice be taken, and where a Mortdean-  
cester or Juris utrum shall be twice taken, and where not,  
upon Lands seized into the Kings hands.

In an assise against two, the one pleads to the Assise, the other that he is not Tenant, but to the King. This shall presently be inquired of by the assise, if the Escheator be not present. But if the King certify that he is seized, whether this be pending the Writ or before, the Court shall cease, 38. Ass. p. 16. Aye de Roy 91. Vide 30. Book of Assise P. 5. and if this be found after *Procedendo*, the assise shall again be awarded, 12 H. 6. fol. 1. And the assise shall not stay, if the Escheator be present, nor then the cause of the seizure, 9 H. 7. fol. 10 vide 16 H. 7. fol. 12. An assise by *Amit.* and *Neece*, the Tenant who was Husband of the Mother, and *Neece* her Daughter pray aid of him as Tenant by the Courtesie, and alledge that she is within age &c. whereby the assise staid for the whole, because it shall not be taken by parcels. So where the Tenant pleads a feoffment of the Tenant by the Courtesie with warranty in bar for one moyety, and voucheth the Neece for the other moyety who is within age, the whole shall be stayed *causa dicta* 41 Ed. 3. fol. 7. Counterplea of aid thereto in a *Mortdeanocestor*, 40 Ass. P. 37. Vouch. 207.

In a *Juris utrum* by three severall summons, the Tenants were essoined, and after made default, and the Jury awarded against the one, and the one summoned alone, and taken by *Nisi prius*, and the whole held discontinued, because there was no mention in the Record of the rest. But if the Record had mentioned the others and their severall Pleas, the Verdict should have been good, and he should have recovered thereupon. For a *Mortd.* or *Juris utrum* may be well taken by parcels where there are severall summons, and all mentioned in the Record, 17 Ed. 3. *Discent* 49. otherwise it is in an assise, because no summons.

*Mortd.* against three by severall summons, they all vouch, the Voucher of the one is Counterpleaded, the same shall not be tried by the assise, because it shall not be taken by parcels, and hereupon seisin found, there shall

shall be inquiry further of the points of the Writ, 10 *Aff. P. 3.* and if the one Tenant vouch forraign, all the affise shall be adjourned, although there were severall *Precipes*, and upon default of the others, the affise shall be awarded against them, but not remanded to be taken, until the issue be ended between the Tenant and the Vouchee; and then all shall be remanded, 17 *Aff. P. 9.*

In an affise against two, the one took upon him the whole, and pleaded in bar, the other prayed aid of the King: the Plaintiff said that he which pleaded in bar is Tenant &c. Now the affise shall inquire who is Tenant; and if the other be found Tenant, he shall have aid, and after a *Procedendo* the affise shall be again taken: and if in a *Morred* the Tenant vouch, and this is Counterpleaded, the affise shall be taken, and if the Counterplea be found for the Tenant, he shall have the Voucher. So upon aid counterpleaded &c. And then for the Vouchee, or Prayer, the affise may be taken another time. So if the Vouchee vouch over, and it is Counterpleaded, *M. 15 Ed. 4. fol. Aff. 33.* So where he which hath pleaded to an affise by *Beliff*, and pleads a fine in his proper person after 26 *Aff. P. 6. Aff. 215.* and the affise shall not be taken upon any Issue after the choice of the Tenant, until the affise have inquired who is Tenant, 35 *Aff. P. 3. Aff. 320.* *Vide 12 H. 9 fol. 2.*

The cause of seizure by the Escheator is not material, otherwise it is of a seizure of him who hath a Commission to inquire and seize, for his seizure without inquiry is void, 30 *Aff. P. 5.*

In an affise against B. and C. B. as tenant of one acre pleads no such town, C. as tenant of the rest pleads jointenancy by Deed, the affise shall not be taken against B. until the jointenant be warned whereby day shall be given to B. until &c. and then one affise shall serve for all, *H. 19. Ed. 2. Affise 407. Affise P. 21. 22 Aff. P. 6.* and where the jointenancy was pleaded to parcel, and the other maintained that he was tenant of the whole, the Affise shall stay for the whole, 19 *Aff. P. 14.*

In an affise by two, the tenant pleads release of the one, and that he is ready to hear the affise against the other, now all shall be adjourned, for the affise shall not be taken of the moyety, 26 *Aff. P. 19.*

The disseisin was found, and damages assessed, and before Judgment the tenant cuts down trees to the value of 20 l. and upon this alledged by the Plaintiff, the affise was caused come back, and found damages for this also, and Judgment given upon the whole, and good, *Trin. 1 Ed. 3. fol. Damages, 116. Audita querela* upon a Defeasance of 50 l. whereof he hath paid 20 l. and tendered the rest at a day, Issue was upon payment alledged, and found for the Plaintiff, who prayed his damages, and process made to the same Jury to inquire of the damages &c. and no challenge admitted upon the matter, which was before the first inquest taken, *P. 22. Ed. 3. fol. Bar 283.*



**I V. Election of the Tenant in an Assise, and how and when the Assise shall inquire thereof, and where it is at the perill of the Plaintiffe.**

**I**n an Assise against two, the one as Tenant pleads in Barre, the other that no Tenant is named, the Plaintiffe makes Title at the Barre, and the other saith, that to the plea pleaded &c. and the Title found for the plaintiff, and that both are joynt-tenants. This finding of the jointenancy is void, because the Plaintiffe shall not be compelled to choose his Tenant, but where one of them takes upon him the whole, and pleads &c. and there if he have mistaken his Tenant, the Writ abateth, and he shall be barred, but he is not compelled where the one pleads in Barre, and the other to the Assise, *per Littl. 33 H.6. fol. 35. ass. 19.* but where the one pleads in Barre, and the other joyntenancy, and the Plaintiffe choose him who pleaded in Bar, and the other is found Tenant, now the Writ shall not abate, but the Plaintiffe shall answer to the joyntenancy (the Reporter seemed of a contrary opinion) *44 Ed. 3. f. 23. ass. 59* and where the one pleaded joyntenancy and the Plaintiff did choose T. for his Tenant, and it was found that neither of the two, but that one of another name was Tenant, and seisin and disseisin found, the Plaintiffe shall recover *42 Book of ass. P. 1 ass. 345.*

In assise against *S.W.* and *R.S.* as Tenant pleads a plea, *W.* and *R.* plead as Tenants, without that that *S.* hath any thing, and plead ancient Demesne, the Plaintiffe said that he was seised untill disseised by them all to the use of *W.* who aliened to persons unknown, and took the profits, and as to the Plea pleaded by *W.* and *R.* joynt-Tenants no Law &c. and upon demurrer it was holden that now *W.* alone shall not have this Plea; and if two plead in Barre Joyntenancy, and the Plaintiffe saith, that they are severall Tenants, they shall not plead a new Barre severally: and if one of the Pernors profits be in fact, and another in Law, and they plead severally, the Plaintiff may say that the one is Pernor in Law, and answer to his Plea, and not to the other, *21 H.6. f. 57. ass. 38.*

But where the Plaintiffe hath chosen him who pleaded to the Assise by Bailiff for his Tenant, where the other pleads a Fine in Barre, the first in his proper person pleaded the same Fine in Barre, and held good, because the Plaintiffe had chosen him Tenant, and so enabled &c. but because it was in the Countrey, to take the Assise of the Seisin and Disseisin, he was ousted of the Plea &c. *Quare* if error, *20 Assise, P. 6 Ass. 215.* the same was adjudged accordingly by *Finch*, because by taking the Assise he was forejudged of all Pleas, *48 Ed. 3. f. 7. Ass. 64.* but note there, that the Assise found him who pleaded to the Assise Tenant and Seisin and disseisin &c. *vide 20 Ed. 3. Assise 123.*

In an Assise against two, the one (who was Tenant made default, the other

other took upon him the Tenancy, and pleaded in Barre, and the Plaintiffe did not maintain him which made the default Tenant to have the Asfise upon his default, but answered to the Plea of the other, and the Asfise was found for the Plaintiffe, and that he which made the default disseised him not, he being outed by the Plaintiffe shall not have an Asfise, but upon such recovery in a *Præcipe*, he which made the default and is outed being Tenant shall have an asfise against him who recovered, and not taken at default, 21 *H.6.f. 57. vide 50 Ed. 3.f. 13. ass.* Otherwise in the former Case, and that he shall have an asfise *Divis. 12.*

And note, that in a *Præcipe* against husband and wife and *T.* where *T.* departed in spite of the Court, now if the Husband and wife suffer judgement to be given without taking the whole, although that they be Tenants of the whole and are outed by the recovery, they shall not have an Asfise of the moyety, 46 *Ed. 3. fol. ass. 62. vide 12 Ed. 4. fol. 1. Divis. 25.*

If the Tenant said nothing, and the Disseisor answer as Tenant, and the Disseisin found, the Tenant shall lose his Land, *per Prisot 33 H. 6. fol. 40.* and if the one plead *nul. tort.* as he which hath nothing, and the other plead in Barre, and it be found against the Plaintiffe, whereby he takes nothing, and after he which pleads to the Asfise and hath got possession, and the Plaintiffe bring an Asfise against him, he shall not plead this recovery against him, *M. 20. Ed. 2. Asfise 398.*

In an asfise against *I.* and others, the others pleaded Jointenancy to part, and as to the rest, as Tenants pleaded in Barre, and *I.* as Tenant also pleads in Barre, and the Plaintiffe chooseth him Tenant, and maketh his Title by breach of a condition, &c. and Judgement was given, where the point in issue was inquired before us, who was the Tenant, it was error: so if the Tenant plead, no Tenant named, and it be found that he is &c. if they inquire of the Disseisors before who was the Tenant, it is error, *P. 11 H. 4. fol. 66. Asfise 48. 12 H. 6. fol. 1.* And if he which is chosen Tenant pleads a Record, and fail at the day, yet no judgement, but another day shall be given to have it, because it is meet to have first an inquiry who was Tenant, 35 *Ass. P. 3. Ass. 320.* agrees upon adjournment of the demurrer before the Tenancy be tryed, 35 *Ass. P. 2.* where there shall be error, 12 *H. 6. fol. 1.*

In an asfise against *S.* and *M.* *S.* pleads a recovery of the same Land in another Town, *M.* as Feoffee of *S.* pleads the same Plea, the Plaintiff without choosing the Tenant demurres, because in another Town, and after adjournment he did choose *M.* Tenant, without that that &c. *Schard* liked it well, because the adjournment is before the same Justices, and in the same plight as it was in the Countrey, and he held the Recovery no Plea, *P. 22 Ed. 3. fol. As. 126.*

In an Asfise the Tenant pleaded a recovery against another named, & the Title Plaintiff mean between the Title & the Recovery, The Plaintiff sheweth how that the Tenant aliened to another pending this Asfise, without answering his Title be mean, or to the right of the Tenancy, *vid. Div. 11.*



So if he against whom *et c.* had entered upon the Land by his assent without Feoffment, 25 *Ass. P. 1. Ass.* 230. and where the one pleads jointenancy, the Plaintiff may well say, that the other was Tenant at the day that the Writ was purchased, and if upon this enquiry the jointenancy be found, it seems that the Writ shall abate, but it shall there abate, because the deed of the jointenancy was void, 16 *Ass. P. 2. Ass.* 233. But note, this was upon Issue joyned between the parties, but if upon the choosing of the tenant the enquiry had been *ex officio* onely, it seem it should not abate, because the tenant which was ouster, pleaded Jointenancy, and not in Barre, 16 *Ass. P. 2.* but *Pigot* thought the Case mistaken, for it shall not abate by the mischoosing of his tenant, but by the finding of the jointenancy.

The one pleaded jointenancy, the Plaintiffe said, that the other was tenant, without that &c. that at the day of the Writ purchased &c. And it was found that at the day of the Writ purchased, the other named gave to him that pleaded jointenancy jointly &c. and found the Seisin and disseisin whereby the Plaintiffe recovered, *P. 18 Ed. 3. Ass.* 77.

In an Assise of Rent, the Plaintiff shall choose his tenant 17 *Ed. 3. Ass.* 75. & *vide* there he chose the mean his tenant.

In an Assise against *F.* and *M.* the one said, that he had nothing but in reversion, and that there was no such *F.* in *verum natura*. *M.* pleaded jointenancy, the Plaintiffe chose him tenant, and Seisin and disseisin found, by which he recovered without inquiring if there were such *F.* &c. 42 *Ed. 3. Ass.* 128.

Note, if every one take upon him the whole, and plead in Barre, and the Plaintiff choose one for his tenant, and the other is found tenant, the Writ shall abate, 44 *Ed. 3. f. 23. Ass.* 59. But it was held otherwise there, if he which is not chosen plead jointenancy, and is found tenant.

An Assise against two, the one pleads to the Assise, the other as tenant to the moyety pleads in Bar, and the Plaintiff chooseth the other tenant, & he which pleaded to the moyety had nothing which might maintain that he is tenant, and so found, and the Seisin and Disseisin found, yet the Plaintiff shall be barred for ever by such triall of the tenant, at the charges of the parties, which is not where every one pleads in Barre, and the Court *de officio* will inquire who is tenant, and there it shall not abate, &c. 20 *Ass. P. 4 Ass.* 214. 16 *Ass. P. 2.*

In an assise against *J.* and *A. J.* as Tenant pleads to the Assise, *A.* pleads as sole Tenant, a fine to him by a stranger, and alledgeth the title of the Plaintiff mean between the grant and execution. Now the Plaintiff prayed the Assise, and some thought that the Court should not inquire who is Tenant, but where the Plaintiff had chosen his Tenant, and if he be Tenant, he shall have this plea, and if the Plaintiff mistake the Tenant, his Writ shall abate, some gain-said this: and if one plead to an assise, as Tenant, and the Plaintiff admit it, and after it is found that he is not tenant that the Writ shall not abate &c. 8 *Ass. P. 1.* 8 *Ed. 3. fol. 1.*

And

And where every one pleads in Bar as Tenant of the whole, it is error to enquire of the issue, before enquiry who is Tenant 11 H. 4. fol: 66. 12 H. 6. fol: 1. *supra.*

V. When the Tenant shall plead after the Assise awarded upon the Plea of his Baile, and what plea: where after the Assise awarded against him, and where in person after the Plea to the Assise.

**I**N an Assise all pleaded to the Assise by Bayliffs which remains for the default of Jurors, and at the day the one appeareth and pleads a release with Warranty, and recovers, yet it was said, that the Statute did not help him, but a in Certificate after the Verdict against him, H. 11 Ed. 3. Ass: 85. 12 Ed. 3. Ass: 116. 12 Ass: P: 37. 8 Ass: P: 18. & 8 Ed. 3. fol: 39. wherto agreeth *Divise* 33.

But where an Assise is awarded upon the plea of the Bayliff, and some are now sworn he shall not plead a Release in his own person, 29 Ass: P: 18 Ass: 182. *Vide* the Tenant pleaded a Release made after Verdict at the day of Adjournment upon the Verdict. In like manner he shall plead the entry of the Plaintiff after the Verdict, but he shall not plead a Release after *Nisi prius*, 21 Ed. 3. fol: 23. Ass: 105.

An Assise against Infants, who severally as Tenants of parcell plead to the Assise by their Bayliff, and the Assise awarded, and after they vouched R. by Lease for life, and he could not change, because it is no plea wherof certificate will lye, 8 Ed. 3. fol: 39. 8 Ass: P: 18. And an Infant was not received to plead discent after Assise awarded upon the Plea of his Bayliff, and certain of the Assise sworn 3 Ass: P: 11. Ass: 187. P: 3. Ed. 3. Age 68.

*Vide Divis.* 1 B. and the 4 C. where he which plead to an Assise by his Bayliff, and after the Assise awarded, was chosen Tenant, he could not plead in Bar, 20. Ass: P: 6.

An Assise of the fourth part of the Ushery of the Common Pleas Bench, upon an insufficient Bar pleaded, the Assise was awarded, the Plaintiff shewed the Deed of the Office to the Court, the Tenant shall not have view therof after the Assise awarded, 7 Ed. 3. fol: 57. Ass: 135. 7 Ass: P: 12.

After Assise awarded which remained for want of Jurors, the Tenant pleaded that the Demandant had entred into part hanging the Writ, and leased it to us for years, and it was good, because it was to the Writ: and if the Tenant alien to the Plaintiff upon condition, that if the Tenant do not, &c. that all shall be void, and he do it not, but the Plaintiff continues seised, the Writ is abated, M: 10 Ed. 3. fol: 5. Ass: 163. so he shall plead every plea comes after the last continuance after the assise awarded, 10 Ass: P: 14.

VI. Pleas



**V I. Pleas for the Tenant of Land in an Assise of Common, Corody &c. and where the Pernor of the Profits is not named, and where all the Tenants are not named.**

**I**N an Assise of Rent, the tenant of the Land pleaded *out of his fee*, and upon title made by recovery by confession of the Ancestor in Dower, the Ancestor had it not but in taile, and we are in by discent, and saith, they were never married &c. and that certified against him, he could not have another Plea, although he were within age, 28. *Ass. P. 53. Ass. 274.* Note that *out of his fee* is no plea, if he shew not in fact that he is tenant *per Prisot, 32. H. 6. fol. 20.*

Upon *out of his fee* pleaded, and title made by grant *de manerio recipiendo* by the hands of T. and C. One of the Defendants said, that the parcel whereof he is seised, the Grantor held in Demesne at the time of the grant; and the other said, that the Land whereof he is seised was charged but with 4s. at the time &c. how the Grant shall enure. *Vide Grant 7 Ed. 3. fol. 9. Assise 132.*

An assise of Rent, and made title by Grant to the Husband and Wife of 8 l. for their lives, and if she survived him, that she should have 40 s. now the Wife survived, and brought an assise of the 8 l. and well, but the tenant being a stranger to the Grant, may well say, That at another time she brought a Writ and demanded 40 s. only, 8 *Ed. 3. fol. 23. Ass. 143.* and yet the other was depending. *Vide feoffment. Divis. 34.*

An assise of twenty pence Rent, and three acres of Meadow, the tenant saith, that this issueth out of the Meadow, and three acres of Land whereof J. holdeth two acres, and T. holdeth one acre not named, and a good plea. And it was found that R. held the Land and Meadow of the Plaintiff, and aliened the Land to divers persons to hold of him, before the Statute, and after the Statute aliened the Meadow to the tenant, to hold of the chief Lord. Now before the alienation of the Meadow the ass. had lain against R. without naming the others &c. But now the tenant holdeth but parcel, and shall not abridge the Plaintiff, nor apportion the Rent in absence of the other tenants &c. *M. 4. Ed. 3. fol. 47. Ass. 165. 3 Ed. 3. Ass. 175.*

If the Plaintiff himselfe be seised of parcel of the Land, whereof &c. and the tenant of another parcel, and a stranger not named of another parcel, the whole shall abate, for he shall not abridge against him that is not named, but he may well abridge for the parcel of which himselfe is seised; but note, that the tenant which pleadeth this must set down that he is tenant of right, and that he holds not the whole of the Plaintiff as of himselfe; for *si se*, the assise lieth without naming the others, 3 *Ass. P. 18. Ass. 188. 4 Ass. P. 5.* In like manner the tenant which pleadeth this ought

ought to tender his rent for his portion, and if the Plaintiff hath been seised of the whole Rent by the hands of the tenant, yet he shall plead this matter, 3 *Ed.3. fol. 21. Ass. 173. 3. Ass. P. 18.*

Lord and tenant before the Stat. the tenant enfeoffs divers of the parcels to hold of himselfe, and others of another parcel to hold of the Lord, now the Lord shall not distrain the last Feoffees, nor have the assise against them without naming the others, and the tenant, but before the last Feoffment the assise did lie against the tenant alone, as tenant of parcel, and himself at the rest, 4 *Ass. P. 6.* Rent granted of one Oxe-gang of Land, and if this be aliened, or recovered, so that the Rent be stayed that he shall distrain in the Mannor of B. and the Oxe-gang is sold, yet he shall not have an assise without also putting the Oxe-gang of Land in view, 1 *Ed.3. fol. 21. Ass. 109. 1 Ass. P. 10. Grant divis. 4. &c.*

It is no plea to say that he holds as Guardian &c. for the Guardian shall hold it charged, 3 *Ed.3. Guardes Divis. 29.* tenant said, that he had nothing but by lease of the King of temporalities whereof &c. had aid, and after *Procedendo*, he excepted against the deed bearing date beyond the Seas, 27 *Ass. P. 43. Ass. 2. 155.*

The Tenant may well say, that the Escheator had seised the Rent for the King by office, or without Office. Judgement if the King being not consulted, &c. So that the King reciting the Grant of the Land, and the Rent reserved ratifie it &c. Or that another is Tenant of parcel not named. Or where the Rent is supposed to issue out of the Mannor of T. and Hundred. The Tenant may say that there are four Towns within the Hundred not named. Judgement &c. But it seems it shall be no Plea, because a hundred shall not be put in view, 30 *Ass. P. 5.*

If a stranger take Rent by coercion of distress, yet the assise lieth against the Tenant alone, without naming the Pernor. 30 *Ass. P. 5. Ass. 267. Vide 33. Ed. 3. Assise 456.* in an assise against the Pernor alone rescous was made by the Tenant and another.

An assise of ten pound Rent, all the Land is put in view, the Tenant who pleads *out of his Fee in generall*, shall not afterwards say, that he is tenant but to parcel, for he might have alledged that at first, and have pleaded over *out of his fee*, but the Plaintiff admitted the plea, by which the tenant shewed, that the Plaintiff hath recovered parcel of the Land &c. for the which cause the Rent was apportioned, 30 *Ass. P. 12. Ass. 300.* and how it shall be apportioned. *vide Avowry Divis. 35.*

And the Tenant may say that the Plaintiff hath purchased part of the Land whereof &c. or that part is descended unto him, 34 *Ass. P. 15. Ass. 318. vide Avowry Divis. 35. 36.*

If a Stranger hath recovered parcel of the Land, whereof an assise brought for the Rent abated, because he named not the Recoverer, 8 *Ed. 2. 11. Ca. Assise 392.* An assise of a Rent charge, not naming all the ter-tenants shall abate, unless that he name a Pernor of the Profits for the whole. But for a Rent service, it is sufficient to name the mesne for all, 33 *Ed.3. Ass. 456.*

M

But



But in a *Scire fac.* against *T.* of 20 s. rent, as *Ter-tenant* a *Deforc.* where ten shillings is a Rent Charge issuing out of his Land, and therest is Rent service whereof he is mesne, the Writ shall abate for the rest, for the Writ ought to suppose him tenant thereof, 31 *Ed. 3. Writ. 331.*

In a *Formedon* of rent, to say that a stranger is seised of parcell of the Land whereof &c. goeth to this action, *M. 17 Ed. 3. Writ 353.*

In an assise where *Cui invita* was brought of Land and Rent, the Tenant by receipt being party to the Writ, as to parcel of the Rent, said, that the Rent issueth out of the Land demanded &c. and this was a good plea to the Writ, and to another parcel said, that *B.* was seised of the Land, and leased it unto *I.* for life, rendring the Rent and died, his heire leased it for life to another, rendring a Rent, and granted to us the reversion, and *I.* the first Lessee is dead, and this was the rent for which the Action is brought, which *B.* granted to the Plaintiff, this is a good plea, for which cause the Plaintiff said, that *B.* was seised of the Rent in fee, and it appeared by the plea of the Defendant, that he is not tenant of the Land, nor of the Rent demanded, 12 *Ed. 3. Writ. 257. vide Divis. 7.*

In an assise of Common appurtenancy, the Tenant said that he is Lord, and one *T.* was Tenant of the Free-hold to which the Common appurtenancy is claimed, and we inclosed against *T.* who aliened to the Plaintiff, and seemeth a good bar, 4 *Ed. 3. Ass. 179* and here it shall be a good plea, that another is tenant of parcel of the Land not named &c. *ibidem.*

## V II. Pleas for the Pernor of the Rent or Tenant, &c. and who is Pernor, and where the Ter-tenant ought to be named, and where not.

IN a Writ of entry of Rent in the *Per*, the Pernor may well say that the Land out of which &c. is ancient Demesne, *M. 4 Ed. 3. fol. 53. Anc. Demesne 19.*

In a *Formedon*, it seems that the Pernor of the Profits shall not say, that another is tenant of part of the Land, of which &c. not named, but the ter-tenant shall have the Plea, and it seemeth no plea for Rent service. *Vide Divis. B.G.* But it seems no Plea, that he holds not of him, for this is to be seen by the Alienation of the tenant in taile, and yet the issue ought to recover. And the Writ lieth against the mesne alone, who is not ter-tenant, nor the Pernor, but shall abate, if he be not mesne of the whole, 19 *Ed. 3. Brief. 468. M. 33. Ed. 3. Writ 921.* and *Vide* that out of his fee is no plea in a *Formedon* of Rent, because this is true, yet the Lord shall falsifie a recovery against tenant in taile, 44 *Ed. 3. fol. 19.*

Non-tenure of part of the Land out of which the Rent charge or Rent sock &c. goeth to the whole, the Writ being pleaded by him who is supposed

posed to hold the Rent in a *Scire facias* of it. So he is supposed Pernor of the Profits. But he shall set forth that he is not Pernor but tenant of part, and it behooves him to say in fact, that it is not a rent-service, unless it do appear by the Writ, and fine which names not any service &c. *Quere.* that if he be not mesne of the whole, or Tenant of the whole Rent service, where there is no mesne; the writ shall abate, as well as of a Rent charge, *M. 33 Ed. 3. Writ 921.* and because the Tenant do not set forth what Rent it is, *19 Ed. 3. Writ 468.*

And it is no plea for the Pernor of the Profit of a Rent charge in an Assise to say that another is tenant to a parcel of the Land; also although he be tenant of the Land, and it be found by verdict, not upon the Plea of the Party, that a stranger is tenant of part, this shall not abate the Writ, *22 H. 6. fol. 23. Ass. 11.*

And if one distrain to my use, and I agree and take the rent, I am the Pernor, *6 R. 2. Ass. 71.*

In an assise of Rent against the Pernor of the profits and Tenant, the Pernor shall not plead release of the Rent; but may well plead a Release of all actions, *M. 8 H. 5. fol. Incumbent 15.*

*Bryan* said, If I grant my rent to *T.* and afterwards bring an Assise against the Tenant, and against *T.* as Pernor of the Profits, and *T.* will not plead the grant, now the ter-tenant shall plead it, which *Keble* utterly denied, and said that the Tenant shall not plead any plea, the Pernor being named in the Writ, *2 H. 7. fol. 14.* But if the Assise be brought against the Tenant alone, he shall plead any plea, and shall compell the Plaintiff to make his title, *5 H. 7. fol. 34.* But where the Pernor pleads in bar, or to the assise, the tenant shall not plead in bar by release or other matter. To *Keble* agreeth *Pigot*, and it seems it is because he is not named as Tenant, but as a Disseisor, *31 Ass. P. 31. Ass. 308.*

In a Writ of entry of a Rent the Pernor of the profits shall not plead out of his fee, *18 Ed. 2. Entry 73.* So neither in a Mortd. of a Rent, *12 Ed. 3. Hors de son fee 30. M. 32. H. 6. fol. 20.* Agreed by *Prisor*, because he shall not compell me to make title, *9 Ed. 4. 11.*

In an assise of Rent it was found, that one not named took the Rent to the use of the Defendant, and that he agreed, wherefore he was held a sufficient Tenant and Disseisor, *M. 6. Ric. 2. Ass. 71. Vide 8 Ed. 3. fol. Mrans de faits 15.* If there be a Pernor not named, in that case the Writ shall abate, *33 Ed. 3. Ass. 456.* but he needs not name the ter-tenant. *Vide 1 H. 8. fol. 4.*

If the service of the Mesne be arrear, and a ter-tenant make rescous, the assise lieth against the mesne alone as tenant, but it is necessary to name the other as Disseisor. *17 Ed. 3. fol. 46. Ass. 75. 33 Ed. 3. Ass. 456. 19 Ed. 3. Brief 404.* For the mesne is the tenant, and the ter-tenant shall not be named but as Disseisor, because the mesne had not made the Disseisin, *31. Ass. P. 31. Ass. 308. Vide Divis. 6. C. 3. Assise, & 8 Ed. 3. fol. 53.*



It is said, that if the mesne alien his services, and take them back again to him and his Wife, and the Lord distrain &c. in an assise the Wife shall be named, but if he alien the rent, reserving the services, and after take the same again to him and his Wife; now in an assise by the Lord the Wife shall not be named. 31 *Aff. P.* 31.

Lord and Tenant by 11 s. Rent, the Tenant aliens to T. who payes to the Lord 9 s. and after makes rescous for the 2 s. Now the Lord shall not have an assise of the 2 s. without naming the ancient Tenant, because he is not seised of the 2 s. by the hands of T. *Quare* 8 *Ed. 2. Aff.* 387. and there it is said, that he shall have an assise of the whole Rent, not of the 2 s. if he hath cause of action. *Vide Divis.* 8.12. *Ed. 4.*

In Nusance you shall not name the Land of the Tenant to whom, as you shall in an assise, but Nusance not without naming the Tenant of the Land, in which, and him that made it, but not against the Feoffee, *M.* 18. *Ed. 2. Aff.* 374.

An assise for taking profit in another mans ground, shall not be maintained against the ter-tenant, without shewing him the Deed. But where it is against a Pernor of the profits, it sufficeth to shew it to the Court, and the party shall not have *Oyer* thereof, if the Plaintiff confess not himselfe privy to the deed, *H.* 8 *Ed. 3. fol.* 16.

VIII. Where seisin of one thing shall be seisin of another, to have an Assise thereof, and of what seisin the assise lieth.

**T**He Grantor of a Rent dieth before attorneyment, seisin had afterwards is not sufficient to have an assise. But if an Abbot disseised of his Rent dieth, and rescous be made to the successor that would distrain, he shall have an assise, 3 *Aff. P.* 5. *Aff.* 183. *M.* 32. *H.* 6. *fol.* 6 49 *Ed. 3. fol.* 14.

But *Hill* held the Judgment erroneous, where the Warden of an Hospitall recovered upon a Rescous to him made, where the predecessor was not seised, *M.* 15. *Ed. 3. Aff.* 93.

The Heir shall never have an Assise of the Seisin of his father, *ibidem*, but all the books are with the Successor, where the Predecessor was seised, and the Seisin continued untill the rescous, and the Title not discontinued in the house by his death, 29 *Aff. P.* 59. *Aff.* 291. and there the successor shall recover the arrears due in the life of his predecessor, whereto agreeth 34 *Aff. P.* 3. *Assise* 314. otherwise it is if the predecessor were not seised in deed, 26 *Aff. P.* 3.

• Possession of the Guardian is sufficient for the Heir to maintain an Assise or Trespasse upon the Statute of 5. *R. 2.* upon the taking away of the ward, 2 *Ed. 4. f.* 5. So of the possession of a Termor, *ibidem* &c. *Br. Colour* 47 *acc.*

If the father enfeoffe his eldest sonne within age, and after entreth as Guardian of the Infant to his use, and after enfeoffe a stranger, this is a sufficient seisin for the Infant to have an Assise against the Feoffee, but not if the father claimed at first to his own use, 8 Ed. 3. fol. 63. ass. 149. 8 ass. P. 15. ass. 107. & vide 16 ass. P. 9.

Grantee of Common being seised, grants it over to T. who regrant it to him before any seisin had by putting in his beasts, yet the grantor being outed, now he shall have an Assise upon this regrant, 36 ass. P. 3. Common 20. and the grantee of the Common being disturbed shall have an Assise without taking any other Seisin, 4 Ed. 2. ass. 452.

If husband and wife be joint-tenants of a Corodie, the husband releaseth and dyeth, the wife demands it, and is denied, she shall have an Assise, for *Cui in vita* lieth not, 2 Ed. 2. *Cui in vita* 18. vide 17. Ass. P. 2. where the wife had an Assise of the possession of her husband, without other Seisin before, or after Coverture, M. 4. Ed. 4. f. 32. and the same Case of Corodie agreed against H. 6 R. 2. *Cui in vita* 25.

Tenant for life attorns to a grantee of the Reversion, and dieth, the grantor enters, and enfeoffe one J. but the grantee comes upon the Livery, and because he could not by the doore, he entred by the window, and being half in, half out, he was drawn forth, this was a sufficient Seisin to maintain the Assise, M. 8. E. 3. Dures 17. but Seisin for half a day after the death of the Tenant for life, was said to be no Seisin, 12 H. 3. Assise 428. See, the putting his Plow upon the Land, and removing of it adjudged no Seisin to have an Assise, 12 H. 3. Ass. 429.

Attorneyment to a grantee of a Seigniorie before the day of payment, is sufficient Seisin to have an Assise of the whole, 34 H. 6 f. 46. Ass. 101. vide *Avowrie Divis.* 9. 5 Ed. 4 f. 2.

The Lord who hath been seised of twelve pence of the two Shillings of Rent, shall have a good assise of the whole, 12 Ed. 4. fol. 7. Ass. 31. 8 Ed. 3. fol. 12. Ass. 141. And if there be Lord Mesne and Tenant, the Tenant within age alieneth part to T. who payes part of the Rent to the Lord Paramount, this is a sufficient Seisin for him to have an Assise against the Mesne for the whole 8 Ed. 3. fol. 53. ass. 147. 29 lib. Assise. p. 59. vide 8 Ed. 2. Ass. 387. *Divis.* 7. F. Heydon said, that the Seisin of the Rent of one Termor doth not suffice for another, 5 Ed. 4. fol. 2. vide 22 H. 6. fol. Assise 10.

Seisin of Common of anothers beasts manuring my Land is good to have an Assise, be the Common in grosse or appendant, so the putting but of anothers beasts onely to take Seisin, and I drive them out presently, 45 Ed. 3. fol. 25. Ass. 61. 22 Ass. P. Assise 228. Seisin of Land, to which &c. is sufficient to have an Assise of Common &c. M. 15. Bd. 3. assise 931.

By recovery of Rent, where another had the profit, a man shall be adjudged in possession without suing Execution, and if the Sheriff put him in possession by a *Cled*, this is sufficient to have an Assise, 45 Ed. 3. f. 25. 31 Ed. 3. warr. of Chres. 22. 22 ass. P. 228. 15 Ed. 3. ass. 91. So upon any



any possession given by the Sheriffe, so if the Sheriffe put him in possession to whom the Rent is rendred by Fine, this is sufficient to have an Assise 5. Ed. 3. Fine 96. 3. Ed. 3. ass. 444. vide 37 H. 6. f. 350 f. 36. vide *admiralty Divis. 9.*

One cannot distrein the same beast by which is put in Execution the same time, 40. Ed. 3. fol. 22.

The Lord grants his Rent upon condition, the Tenant attorns accordingly, the grantee refuseth to perform the Condition, the Tenant afterwards payes the Rent to the Grantee, the Grantor distreins, the Tenant makes rescous, and he brings an Assise without naming the grantee, *Quare 15. Ed. 3. ass. 95.*

A woman seised of Rent takes a Husband who distrains, and upon rescous they have an Assise, and the Writ was *disseisin eus*, but if the rescous had been before the marriage the Assise should have been *Disseisin eam*, 8. Ed. 3. f. 12. ass. 141. 3. Ass. P. 5. Ass. 183. vide 15. Ed. 4. fol. 18. 7. H. 7. fol. 2. 1. Ed. 3. fol.

If the King be seised of Land after the death of my Lessee for life, supposing that he held of him in Fee, and before the *oustre le main* sued forth Enter and am ousted by a stranger, by this *oustre*, I shall not have an Assise, *Quare*; but if the Entry was after the *oustre le main* awarded, and before the Escheator had taken it out of the Kings hands in the Countrey &c. It seems I shall have an Assise, for it is as a licence to enter to him who hath Right, 10. Ed. 3. fol. 2. ass. 156. 10. Ass. P. 202.

Seisin by the hands of him against whom the *Præcipe* lyeth, is sufficient to have an Assise of the Rent, and Seisin by the hands of the Guardian, or termor is sufficient to the purchaser, 8. Ass. P. 14. Assise 191. 8. H. 6.

The Son leaseth Land to his Father for life, and other Land to his father and mother for their lives, and goes beyond the Seas, the father alienes all in Fee, the sister enters upon the forfeiture to the use of the son, if he be alive, if not, to her own use, and upon outring him the son being returned, he shall have a good Assise, 11. Ass. Bar. Assise 196.

If one parcener enter claiming to himself alone, this is a good Seisin for himself to have an Assise of the whole, 26. Ass. P. 2. Assise 233. But generall entry of the one as Heir gives Seisin to all at their Election, but they may have a *nuper obiit* against him who enters, so their possession for their advantage &c. 29. Ass. P. 12.

Where the one Parcener hath the other in Ward, and claims the Rent to her self alone, she being outed shall not have an Assise without naming the other, 36. Ass. Bar. Ass. 328.

Where one parcener claims for all, enters upon the discontinnee, and being outed, she alone recovers against him in Assise, the others may well enter with her, 21. Ass. P. 100. Ass. 100. Yet in this Case the Discontinnee ought to bring his Assise against her who entered alone, for the wrongfull entry doth not give the others possession, 27. Ass. p. 68. 31. Ass. p. 33. And

And if one Heir in Gavel-kind enter generally, and they are vouched, the demandant may well counterplead, that he which entred had nothing in the Land descended, 43 *Ed. 3. fol. 19.* and therefore if the Heir of him which entred not be to demand his part, he shall not say, *Quor insimul tenuit* of his part, 43 *Ed. 3. fol. 16. fol. 27. 19 Hen. 6. fol. 45.*

Seisin of Fealty is not sufficient to take an assise of Rent, 20 *H. 3. Vide C. 4. part. in Bevil's Case.*

*Ass. 433.*

But seisin of a Rose reserved the first two years upon a Lease for life, is sufficient to have an assise of Rent due afterwards, *M. 15. Ed. 3. Execution 63. 5. Ed. 4. fol. 2.*

Upon an *Elegit* the Sheriff makes livery to the Attorney of the Plaintiff, but the Defendant will not go out, whereupon the Attorney departeth not, and upon this seisin the Plaintiff shall have an Assise without taking the profits.

And if a man recover in a *Precipe, Mortd.* will lie against the Abator, but in the former case the Plaintiff cannot enter without Livery of the Sheriff upon pain of an *Ass. 2. Ed. 2. Execution 1. 19.* And a Lease of a Woman who recovers in Dower before execution in deed, although he upon the Land in presence of the Sheriff, who cometh to make it, is held void, and seisin of the rent reserved is not sufficient to have an assise. *Pigot. Quere. It seemes sufficient, 45. Ed. 3. fol. 6. Scire fac. 92.*

The Heir in ward to the King shall not have an assise against him who abated upon the King, for his free hold continues to him, 8 *H. 4. fol. Travers. 14.* But if the King put me out wrongfully, and enfeoffeth a stranger, I shall have an assise against him, 18 *H. 6. fol. 12. 7. Ed. 4. fol. 17.* But if the Disseisor enfeoff the King and a stranger, now a Writ of Entry in the *Post* lieth against the stranger, *per Fitzh. fol. 19.*

A man shall recover against the Heir in ward after the office found for the King, where the assise was pending before the office, 2 *Hen. 6. fol. 6.*

Seisin of many services which ought not to be paid, shall not bind the Tenant in assise, nor in a *Cessavit*, *P. 12. Ed. 4. fol. 7. 3. Ed. 3. fol. 21. Assise 173. 22. P. 68. Assise 206.* And for this if the Grantee of the Lord have seisin of more services, the Tenant shall stop him in an assise by the Deed of his Grantor in reciting the certainty, 28 *lib. Ass. P. 33. Assise 270.*

If the Lord disseise the Tenant who re-enters the Lord disturbed of the Rent afterwards, he shall have assise of the seisin had before the disseisin, 9 *Ed. 3. fol. 8. Ass. 153. vide Divis. 18.*

*IX. Where*



**I X.** *Where the circumstances shall be inquired in Assise, and where in another Action, as well of Plees to the Writ, as in barr, and where for one Plaintiff or Tenant, and not for all.*

**I**N a Writ of entry in nature of an assise by an Infant, where the warranty of the Ancestor was pleaded in bar, the circumstances are not inquired, as neither where a fine is pleaded in bar of an assise. So of a forraign release, if not such as go with the Land, as if he were seised at the time of the Release, 12 Ed. 4. fol. 17. Age 18. And upon a forraign release pleaded, it is held error to inquire by assise of the circumstances, if it be not adjourned to the County where the release was made, 21 Ass. P. 8. Error 79. *Vide Divis. 1. Ca. 9.*

But in an assise by an Infant, where the Deed of the Ancestor was pleaded, it is meet to inquire of all circumstances, as non-age, imprisonment, or where otherwise; it seemed by *Thorp*, that matter found against him shall not be allowed, 16 Ed. 3. Dis. 6. And it is error, where one hath another title not inquired, where the bar is pleaded against him, but if the Tenant plead to the assise, & the matter is found against the Infant, as that his Ancestor disseised the tenant who made continual claim &c. now it is at their discretion whether they will inquire over for the Infant, 12 H. 4. fol. 20. Assise 50. 37. Ass. p. 5. vide 7 Ed. 3. fol. Assise 139.

A darrein presentment brought by an infant, where the deed of his Ancestor was pleaded, he was not put to answer it, but *ex assensu* they presented *salvo jure potentis cum ad aetatem perveneris &c.* M. 4. H. 3. Darrein presentment 22.

A Mortdancestor brought by two Infants and a woman, the Vouchee said, that they had an elder brother who abjured and overlived his Father, and were at issue upon the survivor, and to the issue of the Wife and Infants, they say, that he hath his Record of abjuration. But it seems although that he hath this at the day, yet the assise shall be taken for the Infants *Querr.* But after the Vouchee made default, and yet the Plaintiff had not the assise in right of damages, but at large (*Vide Records Divis. 3.* But if the assise cannot be agreed whether they be next Heire, this shall not hurt, because of this confession by the Record pleaded, for which he recovered, 29. Ass. p. 11. Mortd. 28. 4 H. 6. fol. 23.

If an Infant fail of the Record, yet the assise shall be at large, 33 Ed. 3. Ass. 167.

Where many do lose by default in an assise, the one sueth a Certificate on the release of the Ancestor, and the Plaintiff in the assise being warned, comes not, and the Jury directed at large to inquire whether it were the Deed of the Ancestor, and whether the Plaintiff be his next Heire, whether the Deed were by *Dures*, or by *non sana memoria*, and whether the Tenant

Tenant were seised at the time, and whether the Plaintiff hath title afterwards &c. and every circumstance which the Plaintiff in assise may plead, 26. Ass. pla. 5. Certiff. 7.

Devon said, upon a Fine pleaded against an Infant, the Justices inquired of his Title, and if the Jurors give him Title, the Assise shall be taken in the point &c. but if they know nothing of his Title the Plea stayes, and it is no Title that the Ancestor died seised after the Fine, nor that he was seised and disseised generally: otherwise it is of a discent alledged in a *Mort. d'ancestor*, *Quod non est lex*, *Hill 19 Ed. 2. Assise 410. vide supra Divis. 1. cap. 10.*

In an Assise against an Infant, who pleaded a Barre, and it was found against him, it shall not be inquired what other Right he hath for the wrong supposed: It seemeth that this is where he shall answer to the Title of the Plaintiffe and plead in Barre, for otherwise upon a Collaterall Barre pleaded, as warranty, &c. it shall be inquired over for him, 12 H. 4. fol. 20. 22 Ass. 50. 37 Ass. P. 5. Assise 328:

But where he pleads warranty in Barre, and it be adjourned for difficulty, whether it shall be a Barre in the Case, and at the day he will vary, as that he which released, he alledgeth as of Tenant for life, with mean remainder in Fee, when he had the Fee in possession, and he could not vary, but the Assise shall be taken and shall inquire of this, because he was an infant, P. 44 Ed. 3 fol. 10. Ass. 56. The Circumstances shall be alwayes inquired: the Infant being Tenant pleads to the Assise without traversing the Title of the Plaintiff, 28 Ass. P. 51. Ass. 262. and 29 Ass. P. 12. Ass. 280. 12 H. 4.

An Assise brought by three where two were within age, he that was of full age was put to answer to the deed of the common ancestor, who said nothing passed, and against the Infants the Assise at large, 32 Ed. 3. Assise 98.

But were he pleaded his Lease for life by Indenture to the Ancestor, and that he entred in his Reversion, the Infants all answered, and all of them said, that the Ancestor had nothing of his Lease, 28 Ass. P. 22. ass. 269. But the Infant was not there compelled to answer, and Thorpe said, that neither the one nor the other need to answer, the one being within age, yet he of full age made a Discent, 26 Ass. P. 25 Ass. 284. And note in the former Case, 28 Ass. Pla. the Heir could not say against the Indenture, that nothing passed, but that the Ancestor had nothing of his Lease.

The Deed of the Ancestor was pleaded in Barre of an Assise brought by two parceners; the one being within age; he that was of age pleaded the dying seised of the Ancestor, and the same Title was made for the Infant, the Tenant estopped them by his Indenture of Lease for life from the same Ancestor, both plead the discent, without that that any thing passed. *Persey*, The Infant shall not plead this; for then, if it be found for him upon this Deed, where it is not the Deed of the Ancestor, and the Tenant bring an attain, the Infant shall lose the Land, where perad-



venture he hath another Title, for in the attainr the Circumstances shall not be inquired. *Burton* Justice, he may have a novel Assise upon the other Title. *Pigot*, but it seems, the Issue shall be received, and yet the Circumstances inquired for him, and he shall recover upon other matter found for him. *Et si hoc non*, there shall be inquiry of the Deed, and then Proceſſe against the witnesses, but they were advised, 29 *As. pla. 53. of. 259. vide Divis. 1 Ed. 28 As. pla. 6.* recovery upon another Title found for him.

And in the like Assise, if the Tenant make Title as another sister, and that this Land was allotted to her upon the partition, and concludes in Bar against her of full age, she shall not plead it to the Assise against the infant, but shall conclude in Barre also, and the Infant and the other shall answer thereto, and yet for the Infant the Assise shall be awarded, 30 *As. pla. 7. As. 298.*

Assise by an Infant of Land and Rent: To the Land the Tenant pleads *ne unques seisi*, to the Rent, that it issued out of the same Land, and the Infant was not put to answer, but the Assise at large, *Ch. P. 11 Ed. 3. Ass. 86.* So where Tenant by the courtesie pleads the Deed of the ancestor with warranty made to his wife, and their Proceſſe against the witnesses, 35 *Ass. 3: P. 9. Ass. 323.* But 29 *Ass. P. 53.* they would not award Proceſſe against the witnesses, untill the Circumstances were inquired, and there *P. 17.* it is said, that in this Case no Proceſſe shall be against the witnesses.

An Assise against an Infant making Title by the Deed of his ancestor, the Infant said, that his ancestor had nothing at the time, and it was found that he was seised at the time, but that the Rent was granted upon condition, but this verdict is void, because the Rent could not be upon condition without a Deed, and after adjournment the Assise was remanded by the Infant to inquire whether there were any Deed upon Condition, 33 *Ass. P. 15. M. 33 Ed. 3. Assise 367, Kniwet* said, if the Deed of Feoffment or grant be simple Condition, it cannot be found without shewing forth the Deed *Ch. ibidem.*

#### X. What Pleas the Disseisor shall plead who hath nothing in the Freehold.

**I**N Assise brought by Husband and Wife, the Disseisor may well plead, that the woman is the wife of another man, and not of the Plaintiff, but he shall not say, that the Woman with one *W.* as wife of *W.* levied a Fine to him of the Land, although that he concluded to the Writ, for he shall not plead any Record in delay of the Assise, 10 *Ass. P. 10. Writ 756.* but it seemeth that he may plead an onlawry, if he have the Record

Record in hand there, and that he was at another time acquitted by his Assise, and this although he had not the Record in hand, but this goeth to the Action: It was also held here, that he shall not have the Plea of a Fine, because he is not Tenant: but *Quare* if he shall find Misnomer or Coverture *Schard.* that he shall *M. 20 Ed. 3. Ass. 120.* and see that the Defendant pleaded that he brought a Writ against the Plaintiff of the Land, and there he vouched after this Writ purchased, and so had affirmed him Tenant, and he was ousted of the Plea, because the Plaintiff said, that the other was Tenant, and he onely a co-adjutor to the Disseisor, 43 *Ass. P. 7. Assise 350.*

A Disseisor may plead any matter to excuse himself from damages and which extinguisheth not wholly the Right of the Plaintiff, as release of Action personall, entry of the Demandant in parcell pending the Writ, no such named in the Writ, that the Tenant holdeth joyntly with a stranger, or that the Plaintiff at another time brought a Writ of an higher nature, 35 *H. 6. fol. 13.* so that no Tenant is named 16 *Ass. P. 22.* and the Coadjutor may plead that there is another Writ pending, but not the Plaintiff by his Bailiffe, 8 *Ed. 3. f. 1. Ass. 140.*

See, the Release of Actions personall may be well pleaded by them who disseised the Plaintiff to the use of another named, who takes the profits &c. 1 *H. 3. f. 4. Ass. 41. vide divis. 7. C.*

See concerning jointenancy, 35 *H. 6.* for if the Plaintiff choose one Tenant, and the other plead jointenancy with a stranger, he shall be busted of the Plea, if it be found accordingly by Lease of the Tenant made the day of the Writ purchased, yet the Plaintiff shall recover, *P. 18 Ed. 3. Ass. 77.* and see where in an Assise of Rent, the Tenant pleadeth to the Assise, the Disseisor shall not plead jointenancy of the Land, 31 *Ass. P. 31. vide divis. 7. E.*

The Tenant who hath aliened hanging the Writ may well plead every Barre of Assise, 9 *Ed. 3. 17. Ass. 155.* 12 *Ass. P. 41. Assise 202.* and shall plead jointenancy, *ibidem*, 12 *Ed. 3. Assise 115.*

An Assise against one who claims nothing in the freehold, but by a Statute Merchant of a stranger, the Plaintiff sets forth how he hath recovered, and hath the Land in Execution by *Elegit*, and that the Defendant disseised the stranger after the Statute acknowledged, so the same is extinct, the other that he had nothing of his Feoffment, 21 *Ass. P. 28 Assise 220. 3 Ed. 3. fol. 1.* he who hath Execution by the Statute may plead jointenancy of such estate, *Ass. 140.*

In an Assise the Tenant claims as of the grantee of the guardian, and that the Plaintiff entered, because no agreement was made with him for the marriage, and we oured him, 31 *Ass. P. 26. Assise 306.* and he which claims nothing but as Guardian, may plead a deed to estoppe the Heir by confession of his Father to hold in Knights service, 46 *Ass. P. 13.*

In Assise the Tenant saith that the Plaintiff himself was seised at the day of the Writ, and yet is, 17 *Ass. P. 30. 35 H. 6. fol. 16.*



The Tenant saith, that the Plaintiffe had Execution of a Statute against him, and that T. had Execution upon an *Elegit* against the Plaintiff, and that afterwards he had the estate, and a good Barre, 38 *Aff. P.* 4 *Aff.* 331.

Assise for Executors against a stranger, who entred into Lands devised to them to sell 39 *Aff. P.* 17.

A Disseisor may not plead a Release of Right nor Feoffment, 2 *H. 7. f.* 14. nor ancient demesne, 21 *H. 6. f.* 57. nor any Plea but *nul. tort. &c.* 1 *H. 6. fol.* 2.

X I.<sup>o</sup> *Where a man shall be adjudged a Disseisor without inquiry or Confession thereof, and there by failing of Record.*

**I**N an Assise the Plaintiffe intitles himself by Discent, and it is found against him, and in an attaint the same point is found for him, now the other shall be adjudged a disseisor without further inquiry, & shall lose the Land and damages from the time of the first Disseisin, but upon the discent found in the Assise, it is requisite to inquire over of the Seisin and Disseisin, 8 *H. 4.* 23. attaint 14. *vide Divis.* 9 *Ed.* 29. *Assise.* No circumstance to be inquired of in attaint.

In an Assise by Husband and Wife, the Tenant pleads in Barre out of the point of the Assise, and found against him, now there is no need to inquire of the Seisin or Disseisin, and because if it be found that the Husband was not disseised, but the wife onely, yet they shall recover 44 *Aff. P. Writ* 775. Note, this is to be understood where by the Plea implicitly he confesseth the oustre, 31 *Aff. P.* 12. *vide Divis.* 29.

Upon Release pleaded in a forrein County found against the Tenant, he shall be adjudged a Disseisor without more ado, 22 *Ed.* 3. *fol.* 4. *Assise* 125. 23 *Aff. P.* 11. 8 *Assise P.* 15. *Aff.* 190.

If the Tenant plead a release, and the Plaintiffe alledge that it was upon a condition which he performed at another place, and the Tenant demurreth upon such performance pleaded, and it is adjudged against him, he is a Disseisor, and the Plaintiffe released the damages recovered, 7 *Aff. P.* 2 *Condition* 14. So where the Plaintiffe makes Title, *sur hors de son fee*, pleads in an Assise of Rent, and adjudged for him upon the demurrer, he shall have an Assise in Right of damages, 18 *Ed.* 2. *Assise* 381.

The Tenant saith, that there is no Tenant is named &c. and if &c. the Plaintiff saith, that the Defendant disseised him, enfeoffed an unknown person, and took the profits, the Tenant traverseth the taking &c. now upon this found against him, he is a Disseisor, and damages shall be inquired of, 30 *H. 6. fol.* 1. *Aff.* 15. but if he plead to the Writ out of the point of the Assise, as an Entry depending the Writ, and this be found against him, yet it is necessary to inquire of the Seisin and Disseisin, 10 *Aff. P.* 24.

Where

Where upon an ill Bar pleaded, and oustre confessed, the Plaintiffe makes Title, which is found for him, he shall recover without inquiry of the Seisin and Disseisin: so if he have pleaded a good Bar, and confessed the oustre: so if he saith, lest the Assise came upon the Title, and this is found against him, 6 H.7.f.2. Ass. 36. 18 Ed. 2. Ass. 381. so if a demurrer upon an ill Barre, which confesseth the Oustre be adjudged for the Plaintiffe, the Assise shall be in Right of Damages, 9 H.6.f.47.

The Husband is not a Disseisor for failing of the Record of his wife received, nor by his failer before, upon the which his wife was received, 11 H.4.f.49. vide Divis. 2. A.C.E.

If a Disseisor shall be received to plead a Record, although he was at another time acquitted and fail thereof, this shall help the Plaintiffe nothing, 20 Ed. 3. Ass. 120.

If the issue *sur hors de son fee* in Assise of Rent be found for the Plaintiffe, the Assise shall inquire of damages, 10 Ed. 3. f.41. Ass. 159. 10 Ass. P. 18. 37 Ass. P. 14.

But 29 Ass. P. 49. Ass. 286. they inquired of the Disseisin, and there it was found with force. *Nota*, and if the Plaintiff upon this Plea makes Title, and it is found, all who pleaded shall be adjudged Disseisors, 39 ass. P. 4. But if one alone make the rescous, he alone shall be imprisoned, 27 ass. P. 8. 18 Ed. 2. ass. 381.

In an assise against *W.* and others. *W.* sheweth that the ancestor of the Plaintiff had a son by one *venter*, and this Plaintiffe the daughter by another and made a Lease for life, rendring a Rent, and dyed; the son dieth before the day of payment, and we are his heir, and this was found, and that *W.* did not the Disseisin with the others, but commanded one to take Seisin, yet he was held a Disseisor. *Quare*, if this were for the confession of the oustre, or for the commandement of a stranger, 35 Ass. P. 2. assise 319.

But where one parcener Leaseth her part to *T.* after Partition, who Leaseth at will to *S.* who cutteth grasse in the Lands of the other Parcener, and she brings an assise against *S.* and *T.* now though the cutting was to the use of *T.* and he made not *S.* make any agreement with the Plaintiffe, yet this is no Disseisin in *T.* 37 ass. P. 8. ass. 329.

An assise brought against *J.* and *W.* *John* said that he entred by *W.* and that the Plaintiffe had released to him, and upon the deed denied, it being found for the Plaintiffe, he shall recover with further inquiry. *Quare*, for if he doth not confess the oustre in himself, and the other is not found a Disseisor, 19 Ed. 2. ass. 308. 30 Ed. 3. fol. 13. vide Divis. 4.

And therefore if the Lord improve, and leave not sufficient for the Tenant, and afterwards Leaseth all the improvement to a stranger, upon this matter pleaded, the assise lyeth not against the stranger, without naming the Lord, for he did not ouste him &c. 8 Ed. 3. 39 ass. 145.



XII. Pleas after Adjournment in an Assise, and after demurres and adjournment thereupon.

**I**N a mort. d' ancestor the Tenant pleads *hors de son fee*, Judgement if &c. The Plaintiff demurres whether he shall be compelled to make his Title, and thereupon adjourned, now in the Bench, the Plaintiff shewed not the Deed, because adjourned upon a certain point, 14 ass. P. 17. Adjournment 6.

And upon such like Plea the Plaintiff said, that C. was seised of the Rent by prescription, and granted it to T. who devised it to S. who devised the same to us, and shewed the Custome; the other demurres, because he set not down the Deed of the grant of C. to T. and adjourned, and at the day the Plaintiff shewed the Deed, and it was well, because it is pursuant, 38 ass. P. 28. Shewing. 47.

In an assise the Tenant said, that his father gave the Land in Tail to H. who died, and the Plaintiff claims as heir, whereas he is a Bastard &c. the Plaintiff sheweth the espousalls, and that he was born within them, the Tenant demurres if he shall have the speciall matter, and after adjournment he pleads a divorce between H. and the mother &c. and it seemeth that he shall have the Plea, but the divorce was without calling the parties, for which it is no Plea, 39 ass. P. 10. Bastardy 18.

Where a Release with warranty was pleaded in Barre of an assise, the Plaintiff said, that he which released had it but for his life, the remainder to us in Tail, the remainder to the heirs of the Lessee, who granted his estate and released with warranty, and hereupon a demurrer and adjourned. Now the Tenant shall not say, that he who released had the Fee, although he were an infant, 44 Ed. 3. fol. 10. assise 59. vide 14 ass. P. 15. where an outlawry was enter-pleaded in Barre, and at another day he was received to plead a release, vide Divis. 12.

In an assise the Tenant said, that the wife of the Plaintiff was Tenant after possibility, the Reversion to the heir to her first husband, the second husband aliened in Fee, the heir entred and enfeoffed us, the Plaintiff said, that the first husband devised the Land to him and his heirs, the Tenant demurred, because at the time of the Devise he had not but a tail speciall: now after adjournment the Tenant shall not demurre upon any other point, as the not denying the alienation of the second husband, which takes away the entry of the wife and this husband &c. because the demurrer was upon a certain point, 27 Ass. P. 60. Ass. 259. So upon a demurrer in another Action, as if a Reversion passed by the name of Lands and Tenements, he shall not have advantage afterwards to plead non Attorneyment &c. 34 H. 6. f. 8. and so it seemeth of a speciall attainr, 11 H. 4. fol. 26.

In an Assise against R. and W. of Lands in H. W. said, that at another time

time he brought an Assise of the same Land in *N.* against the Plaintiff who said, that *H.* and *N.* were one Town, and pleaded a recovery in *N.* and they were found to be divers Towns, whereby we recovered, and *R.* as Feoffee of *W.* pleaded the same Plea, and a Demurrer upon it, and adjourned without choosing the Tenant, and it was held that the Plaintiff at the day of the adjournment might choose his Tenant, 22 *Ed.* 3. f. 5. *Ass.* 126.

*Vide Divis.* 6 *B.* where it was demurred, if the wife had 8. *l.* or 40. *s.* by the Deed, and after the adjournment the Tenant would have estoppel to demand 8. *l.* per *scire facias*, brought upon the Fine for the 40. *s.* 8 *Ed.* 3. fol. 23.

An Assise adjourned upon a Plea to the Writ, supposed to be in *C/o.* where at another time the Ancestor of the Plaintiff levied a Fine of Land in *C/o.* the Plaintiff averred the name, upon this an adjournment, and the Writ adjudged good, and the Plea of the Plaintiff good, but the Defendant was at liberty to plead in Barre, and the Assise not awarded as it should upon the Bar pleaded adjudged naught, where no oustre was &c. 6 *Ed.* 3. f. 1. *Assise* 168. but if the Plea be found dilatory against the one or the other, *Divis.* 4. 10 *Ass.* P. 4. and where the Plea to the Writ shall be peremptory to the one and the other, *Vide* 2 *Ed.* 4. fol. 12.

Not attached by fifteen dayes being found by verdict the Tenant, he shall not plead in Barre after that it is found by examination &c. 6 *Ri.* 2. *Ass.* 266. 22. *Ass.* P. 19.

An Assise adjourned upon Demurrer, whether a Barony held of the King might have been aliened before the time of *Ed.* 1. to hold of the Feoffer without licence, as other Lands then might, and at the time the Tenant would have pleaded that the alienation was in the time of *Ed.* 1. and could not, because the Assise was adjourned upon a certain point, 20 *Ed.* 3. *Ass.* 122. *vide the Grant of the King, Divis.* 8. and 22.

In an Assise the Tenant pleads Recovery per ex gravi querela before the Mayor, where the Land is devisable, the other said, that the Mayor had not authority to hold Plea upon this Writ, the Tenant demurres, because it is an ancient Mayor Town, and the Land devisable, yet it seems it is not of Common Right, but he was received to aver the Jurisdiction &c. 39 *Ass.* P. 6.

**XIII.** Where not attached by 15 dayes shall be pleaded, and how it shall be tried, how the attachment shall be made, and how the dayes shall be accompted.

**N**ot attached by fifteen dayes is no Plea in an Assise in the County Pleas, for the Bailiffe is not here to be examined, and it shall not be tried



tried by Assise, for if the Bailiffe be absent at the Assise in the Countrey, this shall not be tryed by the Assise, 3 H.6. *Assise* 2. it was tryed by the Assise, 6 R.2. *Ass.* 462.

And this no Plea where the Bailiffe was removed, so that he could not be compelled to appear, 22 Ed.3. fol.12. *Ass.* 127. if the Bailiffe being demanded comes not, this Plea shall be tryed by Assise 26 H.6. *Ass.* 461.

In an Assise of an office in the Kings Bench, *non attached &c.* was held no Plea, 9 Ed. 4. fol.5. *assise* 29. and it was held no Plea here, otherwise it is before the Justices assigned, 11 *Ass. P.* 30. *M.* 24. Ed. 3. *Ass.* 135. and attachment by eight dayes was allowed in this Court, 22 *Ass. P.* 79. *Ass.* 227. and a *Tales* was granted returnable the next day, 23 *ass. P.* 17. 30 *ass. P.* 26. *Articuli super chartam cap.* 15.

In an assise in the Common Pleas, a new attachment was sued forth, upon a not attached &c. 24 Ed.3. *ass.* 131. *vide A.* but if the parties had day, and pleaded it not, the Jurors shall not take Advantage &c. 41 *ass. P.* 3.

Upon a not attached &c. pleaded, it was found by examination, that the day of the attachment, and the day of the Assise here made 15 dayes, and held insufficient, because the fifteen dayes were not incurred before the day of the assise: also attachment by Glebe Land is void, for it shall be by moveable goods, and such as shall be forfeited by outlawry, or by Pledges, 27 H.6. fol.2. *ass.* 14.

But warning of the Party in the presence of four lawfull men, without the foresaid pledges, or attaching his goods, held good, 34 *Ass. P.* 1. *Ass.* 311. *vide* 34 H.6. fol.13. by what things he shall be attached.

Not attached &c. is no plea where a Franchise is granted, 6 R.2. *Ass.* 462.

Upon a not attached pleaded, the Bailiffe which should have done it by warrant from the Sheriff, *ut oportet* were sworn and examined, how they had done it, and it was found that they went to every Town where the Tenants were, and took one beast untill the parties or their Bailiffe found Pledges to appear, and every stranger that doth this shall be adjudged their Bailiffs, but if none find Pledges, and the Sheriff return this, an Action of the Case lyeth, and although they do attach by Beasts in every Town, yet they may take two Pledges in generall for all the Tenants, 8 H. 4. fol.7. *Ass.* 43. and see there where severall Pledges are taken, if the Sheriff return them in Common, it shall be amended &c. and attachment made without warrant of the Sheriffe is void, 26 H.6. *Assise* 461.

Upon a not attached pleaded, it was demanded who made the attachment, the Plaintiff answered that his servant made it, who being demanded appeared not, whereupon the Plea was refused, for the Assise shall not trye it, but if it were the Bailiffe of the Sheriffe &c. the Assise shall trye it, *per Newton*, 26 H.6. *Ass.* 461.

And where the Sheriffe being examined, saith, that the Bailiffe made it, and the Bailiffe that his boy made it, and the boy being demanded

comes not, for this Assise shall be awarded against him without further inquiry thereof, 27 *Ass.P.* 67. *Ass.* 160.

**XIV.** *Where a Barre in an Assise shall be pleaded to compell the Plaintiff to make his Title, and what Barre shall compell him thereunto.*

**I**N an Assise of Rent by a Prior the Tenant said, that the Land is the Mannor of *W.* whereof *T.* was seised, and by protestation held it of *N.* and being so seised thereof Leased the same to *W.* for life, rendring to the Predecessor of the Prior 5. l. Rent for the Tithes of the said Mannor, and he was seised by the hands of *W.* afterwards *W.* died, and *T.* reentred, whose estate we have. Judgement, whether without Title &c. and it was held a good Plea to compell the Plaintiff to make his Title, 8 *Hen. 6.* fol. 14. *Ass.* 6.

Upon Entry upon a Disseisin of a Rent, the Tenant pleaded in Barre a Rent charge, the Plaintiffe made Title to a Rent service, the Defendant rejoined that he had distreined for it, depending the Action, 12 *Ed. 4.* fol. 11. 36 *H. 6.* Title 22. *vide Divis.* 26.

In an Assise for Rent, the Defendant said, that the Plaintiff held by so much of the Rent as himself, and he took so much &c. as of his very Tenant, and if he complained for any other Rent, no wrong &c. 50 *Ed. 3.* f. 18. *ass.* 68.

*Hors de son fee*, a good Plea, &c. *vide Divis.* 6, 7 *Ed. 3.* f. 8. *Divis.* 12. 10 *Ed. 3.* fol. 41.

The Defendant said, that *A.* whose estate the Plaintiffe hath in the Seigniori, enfeofed him to hold by six pence for all services, and thereof was seised at will, and shewed the deed; this is a good estoppel to compell the Plaintiffe to make his Title, 28 *ass.P.* 33. *ass.* 270.

So to say, that he held of the father of the Plaintiff by a less rent, or by the same Rent, and that he released &c. 41 *ass.P.* 6. *ass.* 343.

Upon *hors de son fee* pleaded, the Plaintiff shall never have an Assise without shewing a specialty, unless he shew divers Discents of the Rent. *Quare* 8 *Ed. 2.* *Ass.* 420. *Divis.* 12.

In an avowry for Rent service, the Plaintiff said at another time he disclaimed the avowant &c. Judgement &c. and it was held no Plea, *M.* 26. *Hen. 6.* avowry 18.

If upon *hors de son fee* pleaded, the Plaintiff maintains that it is within his fee, (as he may) the Tenant may well shew especiall matter how the Rent is extinct, *vide Div.* 18. *P.* 7 *Ed. 3.* fol. 20. *ass.* 133.



XV. *Assise of an office, and how he shall make Title, and where he shall have an Assise of the profits or of parcell of them, of Corodie, or of parcell thereof.*

**I**N an Assise of office of a Packer, all woolls, cloaths, Cony skins, and thrums, accustomed within the Liberty of London in *Middlesex*, and first intituled himself by patent in the Plaint, & afterwards alledged the Disseisin, where the course is first to alledge the disseisin, and after to set forth his title, but it shall not abate, for the form and the Plaint is good for the profits belonging to the Office, without complaining, as if a man hath a Corodie, and the bread is withheld from him, he shall have an Assise of this parcell, and if it belong to the office of Packer to have Cony skins, and they be taken from him by a stranger, an Assise lyeth for them, and not of the office, but Disseisin of parcell of Rent is of the whole, so of Common &c. 22 *H.6.fol.19. Ass.10.* and an Assise lyeth of the whole Rent, although he hath received part, *Fitz. fol.179.8 Ed.3.f.12.*

If a man hath a Corodie of bread and drink, and is disseised of all or part of the bread, he ought to have an Assise for all the bread, and so for part of the drink, 3 *Ed.3.* but it shall be at my choice to have an Assise of the whole office, 4 *Hen.7.fol.6.* whereto agreeth 30 *Ass.P.4.* but there *Shard* said, that he shall not have an Assise of part, if he be seised of the residue, others were of a contrary opinion, *Ass.296.*

An Assise of profits to be taken for keeping of a Park and two *Coltours*, *scil.* Over C. and Nether C. for this every day 1 *d. ob.* and of a rope price 20 *s.* or 20 *s.* and the Plaint was good of the profits, without shewing the summe certain, and without naming the place where he ought to take it, also there is no need to name the parcell of the profits whereof he is not disseised, 3 *E.3. Assise 175.*

But a man shall not be compelled to bring an Assise of the profits, but he may take his Plaint of the office *cum pertin.* and by this shall recover the whole, but it seems that the Plaint of an office, and profits shall abate, 30 *Ass.P.4. Ass.296.*

And a man may make Plaint of a Corodie alone where it is appendant to an office, and Seisin of the office is Seisin of the Corodie, but if he claim it in grosse, he ought to shew the deed &c. *Quare* if he shall not prescribe, 18 *Ed.2. Assise 377.* But see that it was holden, that of a thing appendant a man shall not have an Assise where he is not seised of the principall, as of a Corodie appendant to the keeping of a Port &c. 8 *Ed.2. Ass.387.* An Assise lyeth of the profits, to have 2 *d.* of every Cart which comes upon the Land &c. and is not *in loco certo*, *Quare* 22 *Hen.6.fol.9. Ass.10.*

An Assise of an office in the Common Bench, the Writ directed to the Sheriff of *Middlesex*, and not to the Warden of the Pallais, 8 *Ed.4.f.16. Ass.28.* and an Assise of the office of the Clerk of the Crown in the Chancery, brought in the Kings Bench, yet the Chancery is removeable, and

and the Clerks have no certain place, but where the Judge appoints them &c. 9 Ed. 4. f. 6. Ass. 29. and there he made Title by Patent of the King by the word *concessit*, without alledging, that it was an office before, yet the whole not void, and the Defendant shall have an attain if the Disleisin be found, so in an Assise of a Parckership, it need not be shewed how the office began &c. otherwise it is of a Rent charge, because this is against Common Right, but there against the Pernor of the profits he shall not make Title, also this is an office of Record, and these two Courts are as one &c. 9 Ed. 4. f. 11. Ass. 29.

An assise in *Tork* was awarded upon a *nihil* returned, & the plaint was of the fourth part of the office of Sergeanty of the common Bench in *England*, and it was good, and although removeable, yet *Herl* said, that if he recover here he shall have the office in every place, and it is sufficient to name the place where he is disturbed, 7 Ed. 3. f. 57. Ass. 135. 7 Ass. P. 12. &c.

An assise in 12 Towns, and made his Plaint of the office of Bailiff to have the return of Writs in such a County, and the execution of them, and that he should have two hundred by the year, and shall keep all amerciaments, and sheweth that *S.* who hath the said office in fee by his Deed, granted it unto us for life, and it was moved, that the Return of Writs, Fines and amerciaments, and Hundred, are not Freehold, yet the Plaint is good, because it is of the office it self, and not of the profits &c. But because the Statute of *W. 2. cap. 25.* speaks of Bailiwick in fee, and he had it but for life, so that he could not have a *quod permittat* in lieu wherof an assise is given, the opinion was, that it did not ly, yet the grantor had fee &c. *H. 16 Ed. 2. Ass. 270.*

*Vide*, that in such assise he ought to set down all the Towns where &c. *M. 18 Ed. 2. Ass. 377.*

An assise for keeping of the gate of the great Palace of the Bishop of *C.* in *Kent*, and made his Plaint so, the Bishop being dead &c. Some said, that the Bishop shall be named, as the Lord of Land in an assise of Common. Others were of another opinion: and that in assise of keeping of a Forest, the Lord shall not be named. *Heng.* in a *quod permittat*, he shall name the Lord, so here &c. 8 Ed. 2. Ass. 385. But it was holden that an assise of an office or of the Profits lyeth against the Pernor of the profits, without naming the Tenant, and as to the Pernor of the Profits, he shall shew nothing, 8 Ed. 3. *Mr ans.* 15. but in an assise of Common it behoves to name the ten-tenant, and so in case of the Gate, 4 Ed. 3. Ass. 449. and the whole abated by the Tenant, for parcell not being named, 4 Ed. 3. Ass. 179.

An Assise of a thing joyned with another thing, where it lyeth not by it self, as when a Corodie is granted of Corne, Bread, Drink, a Chamber, and Stable, I shall have an Assise for all, yet the Chamber and Stable are not Corody by themselves, nor do pass without Livery by themselves; but will pass by grant as part of the Corody, *P. 31. H. 6. f. 15. off. 14.* So the Grantee of a Robe and 10 s. Rent, shall have an Assise



for the whole, 29 *Ass. P.* 87. *Ass.* 277. 40 *Ass. P.* 12. and *M.* 16. *Ed.* 2. *Ass.* 371.

In an Assise the plaint was of sustenance, *scilicet*, Wine, Clothing, and Hostelerage all his life, and it is good without shewing in certaine what victuall, and here it seemeth that a servant of the King being admitted by Writ to a Corody, shall not have an Assise thereof, if he shew not the Deed of the Grant of the Abbot, 4 *Ed.* 3. *Ass.* 177. And therefore in an Assise of the Corody, the Abbot pleaded, *hors/on fee*, and the Plaintiff shewed the Deed, *anno* 27. *lib.* *ass. p.* 49. *ass.* 255. *M.* 16 *Ed.* 2. *Assise* 371.

In an Assise of Corody, the plaint was made of so much Bread, Drink, and of a barrell of herring, &c. to take from year to year at the day of Saint *Michaell*, and it was good being made of a Corody, and not of Rent, although it shall be payd at a day certain, 29 book of Assise *P.* 8. *Assise* 278.

So a plaint of a Corody to be taken, *De septimana in septimanam, vel de bora in boram*, &c. 29 *Ass. P.* 55. *Ass.* 290.

A Corody granted of bread, &c. and Chamber, and Livery for his boy, and a certain summe yearly, he brought an Assise, and it was good for all, yet the boy was not named by his proper name, had not the Freehold, &c. 16 *Ed.* 2. *Ass.* 371.

A woman shall not have a *Cui in vita* of a Corody, where the husband hath released it, but an Assise, *H.* 6. *Ed.* 2. *Cui in vita*, 25.

## XVI. Assise of Estovers or of part of them.

**N**ewton sayd, if I have Common of Estovers in two severall Woods which are in divers Townes; and I am disseised of the Estovers in one Wood and not in the other, I shall have an Assise, and shall make my plaint of the onewood only: 22 *H.* 6. *fo.* 9. *Ass.* 10. See there of other profits, and of an Office.

It was sayd, If the Lord grant me to digg Turves to carry, and sell at my pleasure, the soile passeth, and being ousted, I shall have an Assise, *Ut de libero tenemento*, 7 *Ed.* 3. *fol.* 43. *Ass.* 134.

A man grants to J. twenty Loads of wood to him and his Heirs, and the Deed sayth, *Quarum* 16 *Charets predict.* I. *habuit ex dono & concessione R. Patris mei*, for house boot, &c. and challenged; because hee sheweth nothing of the grant of R. the Father, yet it is good, because the grantee was Tenant at that time, and the Rehearfall is not of the effect of the Grant, for which an Assise of all, as of the grant of the Defendant was well brought, 20 *Ass. P.* 8. *Ass.* 217.

Note, when a man maketh plaint to be disseised of his reasonable Estovers

vers, he shall not say in his plaint, of taking the profit; but the plaint shall be of reasonable Estovers, &c. to be taken, *scilicet*, House-boote, Hedge-boote, &c. to build a new house and to repaire the old, and to enclose, and to burne in his Hall, Chamber, Kitchin, Brew-house, and Bake-house, and to have from year to year in twenty acres of wood by view of the Forester, or without view, and if the case be such at his house in such a Town appurtenant, &c. *Trin 4. Ed. 2. Afsife 451.*

**XVII.** *Afsife of Common or of parcell thereof, the Barrs therein, and how the Approvement shall be made.*

**N**Ote, That Disseisin of part of a Common is Disseisin of the whole, and so of a Rent; but a man shall have a good Afsife of part of a Corody, &c. 22. H.6. fol. 9. *Afsife 10.*

A man shall not have an Afsife of Common by seisin taken by the beasts of his Tenant put in to use by his commandement, because it is not lawfull, for common appendant cannot be used with other beasts, then which manure the land, but seisin may be taken by other beasts put in only to this intent, and driven out presently: And *Thorpe* sayd, That if I have Common by specialty for ten beasts, and I have five of mine own, and put them in with five of a stranger, and the Lord take those of the stranger, I shall not have an Afsife, because there was no wrong done unto me, yet if my Termor of a Common be disturbed therein, I shall thereof have an Afsife, &c. *P. 45. 45 Ed. 3. fol. 25. Afs. 61. 22 Afs. P 84. Afs. 228.*

In an afsife of Common, the Defendant as Lord infeoffeth for improvement, leaving sufficient &c. the Plaintiff saith, that he is Lord paramount, and that the Defendant holds this whole Town of him, and none of the Statutes gives approvement against the Lord &c. adjourned. *Hill* said. It seemeth to the Court, that the Tenant may himself approve as well against the Lord, as against another Tenant, whereupon an afsife was awarded to inquire of the sufficiency, *quid mirum*, because this is confessed by the demurrer, and see there, that the Lord shall have no Common by reason of his Signiory, but by reason of his Demesne Land, whereby if he alien the Demesnes saving his Signiory, he shall have no common, otherwise it is *contra* 18 Ed. 3. fol. 43. *Afs. 80.*

Afsife of a common as appendant, the Defendant alledged unity of possession &c. The Plaintiff said, that the Land was his ancestors Land, and one *N.* was seised of the Common as appendant, before the Unity of the possession &c. upon this the afsife was awarded, and it was found that *N.* was seised of common appendant, but that he laid nothing in the Land, to which &c. in fee, but at the will of the Lord, in whose hand &c. *Hill*, the Reversioner is holden, and he nor denyed Tenant, and nothing is to be inquired of, but if *N.* were seised as of common appendant. *Thorpe*, he which:



which holds at the will of the Lord, cannot be seised of Common as appendant, but the one Land and the other was in the hands of the Lord and no man shall be bound by a *nihil dicit* of the Tenant in an Assise when the Plaintiff makes Title, but it shall be inquired &c. and after the Plaintiff was *non suit*, *M. 15. Ed. 3. Assise 94.*

An Assise of Common in grosse, where upon the matter it appeared, that it was appurtenant, abated *15 Ed. 3. vide appurtenants.*

An Assise of *Turbary* in *M.* and made Plaint to have Common of *Turbary* in 100 acres of Moore, to dig and carry at his pleasure, and good for his will hath relation to have the thing when he pleased, not to make an estate at will, *7 Ed. 3. fol. 43. Ass. 134.*

Where the Assise is taken to enquire of sufficiency of Common left after inclosure, and found not sufficient, the same Jurors ordinarily by their discretion do prosecute upon oath, set forth sufficient common to the Plaintiff, so that the Defendant himself may inclose the residue, and this is by the Statute &c. *M. 7 Ed. 3. f. 67. Ass. 137.*

A man himself incloseth in his Signiory, not leaving sufficient common, and leaves the inclosure to one *A.* and dieth, and one who was seised before the inclosure (*ut oportet*) brought an Assise against *A.* and others, and found the not sufficiency, the Seisin of the Plaintiff before, and that some of the Defendants were with the Lessor, in assisting him when he inclosed, but that they had nothing to do in making the Ditch, yet they were adjudged Disseisors, and the Plaintiff recovered, *8 Ed. 3. f. 39. Assise 145.*

In an Assise of common appendant, the Defendant said, that the Land which &c. is land newly inclosed, to which common cannot be appendant. The Assise found it ancient Land, and that the Lord of the Town was thereof seised, and enfeoffed *R.* who enfeoffed the Plaintiff, and he was thereof seised, as of common appendant, untill &c. *Herle.* This is a full verdict, that he was seised as appendant in the Assise, for the right of the appendancy shall be tried in a *Quo jure*, by which he shall recover the common and damages, *5 Ed. 3. f. 15. Assise 167.*

One Lord himself inclosed to the damage of others, *4 Ed. 3. Itin. D. vide approvement.*

In an Assise of common appurtenant, it is a good Plea for the Defendant, that he as Lord inclosed, and that at the time &c. one *I.* was seised, and enfeoffed the Plaintiff after the inclosure &c. and the Plaintiff was compelled to answer to this, whether he had any thing at the time of the inclosure &c. *4 Ed. 3. Assise 179.*

In an Assise of Common in an hundred acres, the Defendant sayd that the moyety is seised into the Kings hands, by the forfeiture of *A.* judgment whether without Counsel, and hereupon it was found by examination of the Escheator to be by Mets and Bounds, the Plaintiff would have withdrawn his plaint, for this, but could not, *29 Ass. P. 10. Assise 279.*

A Parson had an Assise of a common in gross by prescription, and it abated not, by the escape of his beasts in the land, pending the Assise, 33 *Ass. P.* 22 *Ass.* 310.

In an Assise of Common of fishing as appurtenant, and by compulsion made title by Deed, which was, *Totam partem piscaria mea de S. al. D. salvo mihi et heredibus meis stagno molendini mei de T.* and it was a good title to Fishery in the same pond, if the Grantor had fishing therein before the Grantee, and that within the Precinct &c. and the grantee seised thereof after &c. And Fencot said, If I grant a man Common through all my Manor, I cannot my selfe enclose, but if the grant be saving such a parcell of land, he shall not have Common there, 34 *Ass. pla.* 11. *Ass.* 316.

Common granted to H. and G. and to the Heirs of G. G. hath issue B. and dyeth, B. being seised at the will of H. he being yet alive, grants the Common to a stranger, who being disturbed thereof by the Heir of the first Grantor, brings an Assise, and afterwards upon the opinion of the Court, this matter being found that H. is now dead, and the Plaintiff seised after the Grant to him, but not to have it but at the Will of H. at the time of the seisin, whereof the Assise, &c. 37 *Ass. P.* 14 *Ass.* 330.

Note by Nevill and Sprigg Justices, That a man shall not have an assise of Common against him who disturbeth him alone without naming the Tenant of the Soyle, &c. *Trin. 4 Ed.* 2 *Ass.* 449.

Grantee of Common may well grant it over before any seisin had, because it is in him without Livery of any, &c. 36 *Ass. P.* 3. *vide Common Divis.* 3. *ca.* 8.

What shall be a sufficient seisin to have an Assise of Common, *vide Ass. Divis.* 8 *ca.* 6. 36. *Ass. pla.* 3.

The Tenant of the soyl shal be alwayes named in an Assise of Common, *Quod vide,* 4 *Ed.* 2. *Ass.* 444.

### XVIII. Assise of Rent, parcell of Rent, and where, and how he shall make his Title.

In an Assise of a Rent Charge, upon Default of the Tenant, the Plaintiff cannot have an Assise without making his Title, 22 *H. 6. fol.* 23. *Assise* 11.

One joynt Tenant brings an Assise after the Death of the other, and upon the matter he shall recover the arrerages also, which incurred before, 33 *H. 6. fol.* 20. *Ass.* 18.

The plaint was, *De redditu annuorum uncijs filii de Cotton*, three pounds of Wax for a certain Candle in the Church of B. before, &c. at the Feast &c. *Et unius lampadis vitrij, & duarum laginarum olei, & unius libri incensi,* &c. and sheweth, that he and his predecessors had used to distrain for it, and because this Rent had been before the Statute, it was held that it shall be



be a rent service, for which he needed not make title in the plaint, 35 H. 6. fol. 6. and how this shall be, *vide* 9 Ed. 4. divis. 16. E. and there the plaint of yarn and three pound of wax, are not of severall Rents, but one Rent, so they shall be demanded joyntly, and the Assise good by the person, although it be no profit to him, 35 Ass. 21. *vide*, where they shall not be severall rents, 3 Ed. 3. Ass. 175.

Assise of Rent against a Prior, and made title by grant of his predecessor for tithes, and held, although the tithes are retained, yet it was not lawfull to detain the rent, because Executory: Otherwise it is, if the rent were granted for counsell, or for having a gutter over his land: So if a man holdeth for paling my park anew for the ancient pale, &c. In these cases, the denying of the one is the extinguishment of the other, because executory, &c. Trin. 9. Ed. 4. fo. 19. Assise 30 & 15 Ed. 4.

Entry upon Disseisin of Rent upon bar pleaded as to a Rent charge, he made title to a Rent service, and that the Tenant had enfeoffed a stranger unknown of parcell, and took the profits which he denyed; now it seems that he ought to set down the quantity and value of the parcell aliened, so if the residue be found for the Demandant, the Rent may be apportioned, and if he alledge the value lesse then it is. *Quare*, if the issue shall be there upon: And note that a Distresse taken (hanging the Assise) shall abate it, 12 Ed. 4. fo. 11. Assise 32. M. 13 Ed. Assise 109. 20 Assise 3. P. 52 Ass. 288.

Assise in H. The Plaintiff makes plaint of a Rent, the Tenant pleads *Hors de son fee*, without shewing the certainty of the land, the Plaintiff's wife sheweth that shee was endowed of the land in view by the Tenant, and leased it to him again by Deed, rendring the Rent &c. and the Deed was of this Land with other in the County of M. rendring the Rent, &c. The Tenant saith, that six acres parcell, &c. are in the County of M. whereof the Rent &c. Judgement. *Hulls* said, that this should not be pleaded without shewing the certainty of the land. The Plaintiff sayd, That the whole is in H. and he was not estopped by the Rentall of the Deed, that parcell was in the County of M. &c. 7 H. 4. fol. 29. Ass. 45.

And an Assise by two upon a Feoffment to one rendring to them two, &c. *vide* 18. Ed. 2. Ass. 381.

And an Assise of Rent reserved out of an Advowson, P. 29 Ed. 3. Ass. 366.

An assise of Corn upon *hors de son fee* pleaded, he made title by prescription, and the Writ abated, because the Plaintiff claimed in right of his Parsonage not naming himselfe Parson, but Prior &c. 12 H. 4. fol. 20. Assise 49.

An assise of Rent against T. and R. the Rent found arrear 15 years, that is to say, every year a marck, and assessed damages, and that R. was Ter-tenant, but T. alone made the Rescous, but he is not sufficient for the damages &c. *Wich*. all the arrearages shall be charged upon the Tenant, and by the Statute that every one shall answer for his time, he shall

shall answer the damages for the insufficiency of the other &c. as *Fitzb.* reporteth, and the Plaint shall be as against the Tenant, because he is not a Disseisor, 40 *Ed. 3. fol. 24. Ass. 52.* The judgement was, that he shall recover against the one and the other generally. And note, the estate of the Tenant was not after the Disseisin, but also before. Moreover the Tenant was not Tenant but for one year, and all the arrearages recovered against him, and the damages agree in Common, 40 *Ass. P. 3. Ass. 130.*

What seisin of Rent shall be sufficient to have an asfise. *Vide Divis. 8.* throughout. Seisin of part is Seisin of the whole. *Divis. 8. and 16.* The Defendant said that he took so much of the Rent, as he himself &c. a good plea 50 *Ed. 3. fol. 18. Divis. 15.*

A Woman seised of a Rent granted it, and died before attornment, the Tenant attorned, the Grantee seised, and he in reversion releaseth, this is a sufficient title to maintain an asfise, because a Disseisin found, *T. 16 Ed. 3. Ass. 74. 16 Ed. 3. Release 56.*

*Littleton* held that a Release was void to the Pernor of the profits, and that yet I shall distrain, and have an asfise, but I shall be barred in a *Formedon* by this release by the admittance, &c. 15 *Ed. 4. fol. 8.*

An asfise of 20 s. Rent, and found that the Plaintiff leased the one part of the Land &c. rendring for the one 10 s. and the other 10 s. and distrained in the one part for the whole, now he shall recover for this part only where he distrained &c. *Quart* of the damages, *M. 17 Ed. 3. fol. 52. Assise 76.*

But if the father grant 18 s. rent by one Deed, and 20 s. rent by another Deed, and the son confirm these Deeds, and further grants 10 s. &c. now one asfise will ly for all the Rents upon the last Deed, and he need not shew the other Deeds &c. *H. 12. Ed. 3. Ass. 112.*

An asfise of Rent, and made title by grant of *W.* the father for life, and confirmation of the Son after his death, with a clause of distresse, and it may be, that the Tenant for life grant a rent charge, and after his death he in Reversion confirms it, but this is not good without a clause of Distresse, and then it is a new grant. The Case was, that the father granted the Rent, reserved upon a Lease for life, and dyeth, the Tenant dieth, the son enters and confirms *ut supra &c.* and the title upon both the Deeds good, wherefore the Tenant in Asfise said that the sonne had nothing in the Land, at the time of the confirmation, the other that he was seised &c. but this (as at the time) shall not be entred, 14 *Ed. 3. Ass. 109.*

In an Asfise of Rent it was found, that the Land is *hors de son fee*; but that he and his ancestors have been seised time out of mind &c. and he shewed the Deed of purchase of the Rent, but not of the commencement, and recovered, yet he claimed it as a Rent service, *M. 13 Ed. 3. Ass. 118.* See after.

An Asfise of 2 s. Rent *cum pertin.* the Tenant said, that *W.* was seised of the Land &c. and held it of the Plaintiff by fealty and a Rose, and the



Plaintiff held it over R. One R. and W. enfeoffed the said R. so the mortuallty extinct, and we have the estate of R. and upon this it was adjourned, and *Herl* said, that now he shall not compell the Plaintiff to make his Title, because of the adjournment upon the bar, which compells not to make his title, and it may be, that he complained of Rent service, and if he had pleaded *hors de son fee*, and he had entitled him to a Rent service, whereas if he had replied generally within his Fee, you might have pleaded this matter after, *P. 7. Ed. 3. fol. 20. Aff. 133.*

An assise of a Rent was awarded by default without shewing what Rent, *8 Ed. 3. fol. 12.* but *8 Ed. 3. fol. 53.* he was compelled to make his title certain &c. and to this agreeth *22 Book of ass. P. 68. Aff. 226.* So although the Tenant plead to the assise, yet it shall not be awarded without shewing what Rent it is, *26 Aff. P. 6. Aff. 234.*

But it was said, *30 Aff. P. 5.* That where the Plaintiff made Title of an office to serve in the Court, and another Title is found for him, yet he shall recover *Aff. 297.*

An Assise of Rent to part, the Tenant pleaded a release, and to the residue said, that the Plaintiff disseised him of the Land, and he recovered in an Assise, and the arrears during the Seisin of the Plaintiff were recovered for damages, and as to the residue that he was ready, and yet is, and the Plaintiff could deny the release, whereby the plaint abated for that, and as to the residue of the Rent found due before the disseisin, it was not recovered &c. and part was after, and that he could not recover &c. for he refused to pay the Rent, if the Plaintiff would not make him an acquittance, wherefore the Plaintiff recovered, and the damages was apportioned for the Rent before the Disseisin and afterwards. *P. 9. Ed. 3. fol. 8. Assise 153.*

An assise of Rent upon a Grant of an Annuity or pension, and if it be arrear, that he distrain in the Lands, this is good. And upon a Rent granted to be taken in the Mannor of B. and that he may distrain for it in the Mannor of D. &c. if they be in the same County, both shall be said to be in view, and if in divers Counties, then that alone where the Rent is first granted to be taken, &c. *P. 10. Ed. 3. fol. 19. Aff. 157. 3 Ed. 3. fol. 15. Aff. 172.*

But if a man bind all his Lands in a Rent charge in divers Counties, assise lieth not in one County, *18 Ed. 2. Aff. 380.* and if a man hath an annuity, and the Tenant grants by another Deed, that he may distrain in certain Lands, assise lieth, but if this were issuing out of the Lands before, both shall be put in view, *P. 29 Ed. 3. Aff. 366.*

A man binds all his Lands in Dale to a Distress, this is sufficient to have an assise, although he alledge no place certaine, the Tenant said that the Plaintiff had granted the same Rent to T. being ter-Tenant, whose estate he hath, and good &c. *3 Ed. 3. fol. 12. Aff. 171.*

An assise of Rent, and the Deed was of a Lease for life, untill he should pay &c. this is a sufficient Free-hold to have an assise, *3 Ed. 3. fol. 15. Aff. 172.* In

In an affise of Rent, where the ter-Tenant, or all the Tenants be named, or the Pernor of the Profits, or the mesne alone. *Vide Divis. 6. and 7. throughout. 3 Ed. 3. fol. 21.*

An affise of Rent, the Plaintiff makes his title, that he, and they whose estate he hath in the Mannor, have been seised of the Rent time out of mind, &c. and claimed not as parcel nor as appendant to the Mannor &c. and it was not good without shewing the Deed, notwithstanding the seisin, because it is not Rent-service, and of a Rent-charge it behoves always to shew a Deed &c. So *Franceses* shall not be claimed by a *Que estate* &c. 22 *Book of Affise, P. 53. Aff. 214. 23. Book of Affise P. 6. Vide Amnity Divis. 4. Vide of Monstrance supra, 7. 13 Ed. 3. Vide Division 44.*

In an affise of Rent-charge, the affise found seisin without inquiry of the Deed, and that he came to the Land and demanded the Rent, and there was none ready to pay it, and that he went forth, and after took a distress, and rescous was made by a Stranger, not known to the Tenant: *Wilby* seemed to think the Demand was not sufficient, which was not made to the Tenant himself, But it seems no Law, but here by the distress after, he hath waved the former Disseisin upon the demand, and the Writ abated for not naming him who made the rescous, 29 *Aff. P. 52. Aff. 288. Vide 9 Aff. P. 7.* Where first he would have distrained, and rescous was made unto him, and afterwards he demanded the Rent, and it was denied, and by this demand the first disseisin was not waved &c.

How Rent shall be apportioned, *Vide Divis. 6. and 7.*

Circumstances to be inquired for an Infant in an affise of Rent. *Vide Divis. 9.*

**XIX. Where an Affise shall be taken in confinio Comitatus, and what thing shall be put in view in an Affise.**

**A**N Affise of Packer of all Wools within the liberty of London, in the County of Midd. and furniseth that *westminster* is within the Liberty of London, in the County of *Middlesex*, and London is a City by it selfe, and County by it selfe, yet the affise was held to be well brought in *Middlesex* and not in *confinio*. But in an affise of a Rent charge of Lands in divers Counties, all the Tenants shall be named &c. 21 *H. 6. fol. 9. Affise 10. Vide 7 Ed. 3. fol. 135.* An Affise of Office in the Common Bench, brought well there, where the Bench at the time was, without naming another place or County.

At the Common-Law a man should never have an affise of a Rent granted out of two Mannors in two Counties, and if it were a Rent-service, in such case the Lord never had a *Cessavit*. *M. 18 Ed. 3. fol. 33. Aff. 79.* But in the first case, he shall have a Writ of annuity for the Rent, 18 *Ed. 2. Affise 380.*



But at this day he shall have an assise in every County, and one joynt patent, and the Justices shall enter into the two Counties, although there be twenty Counties betweene them by the Statute, 5 *Ed. 4. fol. 3. Ass. 26.* And so is the Order, if a man hath common appendant in one County to his Mannor in another County, there shall be two Assises and one Patent, *Fitzh. fol. 180.*

An assise of Common in *G.* the Writ directed to the Sheriff of *Gloucester*, the Land in view being in *Wales*, and out of his jurisdiction, and is in no County, nor is Town or Hamlet, but because *G.* is a Barony in the Marches of *Wales*, although the Tenants shall be impleaded in the Court of the Lord, yet the Barony it selfe (the profit whereof is now demanded) is by the Statute pleadable by Writ in Chancery, directed to the Sheriff of the County adjoyning, whereby the Writ is well brought, and to the residue you have pleaded acceptance, the Writ good, and it seems it is not material, although it had been challenged before *6c. 18 Ed. 2. Ass. 282. 8 Ed. 4. fol. 6.*

In the assise of Office for Packer of Wools *supra A. Markam* directed what thing shall be put in view. *Pafton.* If he who is Sheriff for life be disseised, the whole County shall be in view. *Poole.* If the house where the Lane was shall now be put in view, then at another time another house *6c. sic infinit.* *Ashton.* If he who hath a Corody be disseised of his bread, the Pantry shall be put in view, and afterwards the Writ was admitted good. See the Book 22 *H. 6. f. 9. Ass. 10.*

Assise of Office in the Bench, the Bench shall be put in view, and it shall be where it was when the disseisin was done, although it were removed into another County before the bringing of the assise, for the view shall be where the Disseisin began, *per Moyle 8 Ed. 4. fol. 16.*

A man recovers in an assise of Land, brought in the common Pleas at *E.* and now the Bench is removed in *Midd.* and the Tenant bringeth an attain in this place, the other shall abate it, because not brought in *E.* and this when the attain is to be taken, if he pass not his advantage by pleading then, *M. 6. Ed. 3. fol. 55, and 56.*

An assise in two Towns, the Jurors have the view but in one, whereby it was remanded to have it of the whole, and to be here *6c. 24 Ed. 3. fol. 26. Ass. 129.*

A man grants Rent out of such Lands, and if it be recovered or aliened, that he distrain in such Lands, if in the same County, both places shall be put in view in an assise, *1 Ed. 3. fol. 15. Ass. 169. Vide Divis. 17. M.* of this. So if he grant Services with a Distress in other Lands *6c. 2 Ed. 2. Ass. 360.*

It seems that an advouson a Knights Fee, nor hundred shall not be put in view, and therefore no assise for Rent granted out of them: but if a Rent be granted of a Mannor and hundred, both shall be put in view, *30 Ass. P. 5. Ass. 297.* also a Rent shall not be put in view, *3 H. 6. f. 22.*

A man shall not have an afsife of suite to a Mill of all Corn spent in such a house, for nothing can be in view, for the house shall not be, because there is no profit issuing thereof, and it seems here he shall not have *Setlam ad molendinum*. *Quere*, but if the Suite was of corn growing in such a place, the afsife will lie, *Tr. 19 Ed. 2. Ass. 399.*

XX. Where the Defendant may plead two or three Pleas to a Writ; and over if found &c. and what Pleas may agree in this point.

**I**N an afsife the Tenants say, that the Land is in another Town, and if not found, then no Tenant named &c. and if found no wrong &c. but he cannot have the two pleas after the former, for no man shall say that the Land is in another Town, if he be not Tenant. *M. 30. H. 6. fol. 1. Ass. 15.* But he may well say, that part is in another Town, and if found, No wrong &c. *12 Ass. P. 20 Ass. 199.*

In an afsife of Rent, the Bailiff pleaded the Misnomer of the Town, and if &c. that another is Tenant of the Rent, *15 Ed. 3. Ass. P. 95. Vide Divis. 8.*

An afsife against *B. F.* and *G. B.* said that he had nothing but after the death of *G.* and there is no such *F.* in *Rerum Natura*, *G.* pleads jointenancy, and if &c. and *B.* was found Tenant, and the Justices would not inquire whether *F.* were Tenant, because *G.* pleaded over to the afsife, *Quere 24 Ed. 2. fol. 26. Assise 128.*

An afsife of Rent, the Tenant pleaded Misnomer of himselfe, and if it be not found &c. *hors de son fee. Herle*, by the *hors de fee*, the Plea to the Writ is waived. *Ald.* said, that both have been received, *P. Ed. 3. fol. 15. Assise 172. Et vide 3 Ass. P. 9. Assise 186.* agreeth with *Herle*, and also that after *Hors de son fee* is pleaded, he shall not plead misnomer.

In an afsife of Common, the Tenant saith that a stranger is Tenant to part of the Land not named, and as to the residue that he is Lord, and that he inclosed in the time of the other Tenant. *4 Ed. 3. Assise 179.*

In every case where the Tenant pleads to the Writ a thing triable by afsife, if he will, he may well say over, and if &c. and it shall be tried by the afsife, and the Plaintiff shall have no answer, if it be not to the person, as coverture, &c. or such matter as is not triable by afsife, as outlary, excommunication, &c. For as to these the Plaintiff ought to answer. But in the other Cases, although the plea be found against the Tenant, the Court will inquire over of the Seisin and Disseisin. So in a *Juris utrum* where the Tenant Pleads to the Writ, whether it be the Free-hold of the Plaintiff, or the Tenant, he shall plead over to the right, and if he do not, the Court will inquire thereof upon his plea found against him. So if in a

*Mortdanceson.*



*Mordancest* er he plead Jointenancy with his Wife, or that he had nothing but in her right, he may say, and if &c. where in his default we will inquire of the right, 40 *Ed.* 3. fol. 29.

In an assise brought by the Master and Brethren of the order of the nine orders of Angels, the Tenant shall not plead no such Corporation, and if &c. no wrong, because the first plea goes in Bar, wherefore he alledged that the Corporation had another name, 22 *Ed.* 4. fol. 34.

But see it was holden, where the Tenant pleads a Bar, and doth not confess the Ouster, he may well plead over to the Assise, because there inquiry shall be made over of the Disseisin, upon that found against him, not so where he pleads a Release &c. for he confesseth the Ouster, 22 *Ed.* 4. fol. 39.

XXI. *What Disseisin shall be adjudged Disseisin with force, and where the Justices, ex Officio, may inquire of Robbery and force.*

**I**N an assise of a Rent-service it was found, that the Tenant made rescous, but not with force, yet it was holden that this rescous is force, and a *Capias pro fine* issued. But the Plaintiff shall recover but single damages, because out of the Statute, not being found *Vi & armis*, 33 *H.* 6. fol. 30. *Ass.* 18. and where it was found generally, that the Plaintiff would distress, and the Defendant would not suffer him, a *Capias* was awarded against him, for it is as a rescous and force, 9 *Ass. P.* 7. *Ass.* 193. 29 *Ass. P.* 49. *Ass.* 186. *Vide* the Statute, *W.* 1. cap. 36. and anno 4 *H.* 4. c. 8.

An assise for feeding his severall, the defendant claims common appurtenant, and this is found against him, and because he confest the feeding there, this was holden sufficient to commit him to Prison, although it was found that he used no force, 27 *Ass. P.* 30. *Assise* 153.

In an Assise the Disseisin found to be without force, but after the Disseisin that he cut down trees, and this was holden a Disseisin with force, &c. 30 *Ass. P.* 50. *Assise* 301.

An Assise by Husband and Wife, the Disseisin found, and that at the time thereof, certain goods of the Husband were carried away, and thereby the Disseisin was adjudged to be with force, and the party shall be imprisoned, and this point is enquirable, *Ex officio*, &c. *M.* 11 *H.* 4. fol. Judgement 70. and 7 *H.* 6. fol. 32. The Justices would not inquire of movable Goods taken away in Assise, but of Trees cut down by them to be put in damages, 4 *Ed.* 2. *Damage* 10. *Vide*, this is against the Statute of *W.* 1. cap. 36. And note, that although that this Statute speaks of the time of the King that now is, *scil.* *Ed.* 1. yet the Statute is perpetuall. And so it was agreed by the Bench in the reading of *Serjeant Maanwood* upon this point

point in his reading, when he was made Serjeant in *Lent Anno 9. Eliz. Regina.*

If Husband and wife be disseised, and moveable goods carried away, he dies, and the wife brings an Assise, enquiry shall not be made thereof for damages: but for trees cut down it is otherwise, *H. 8. Ed. 3. fol. 54. Damages. 110. 8. Ass. P. 21.*

XXII. *Where the Defendant may relinquish the issue taken upon his Barre, and may plead to the Assise, and where he may plead another Plea in Barre,*

**I**N an Assise of three houses, the Tenant pleaded one barre for one, and another for the two, and at the day of the View, the Plaintiff puts one house and three chambers, parcell of the same house in View, now for the two houses, the Tenant relinquished his Barre, and pleaded to the Assise. *Moyle*, this ought to be in a release, and so it was &c. 34 *H. 6. f. 19. Ass. 20.* The cause, because there was a thing put in view, which was not in the Plaint. In like manner, the Bailiff or Attorney may relinquish this Plea, and plead to the assise, 34 *H. 6. f. 42.*

And he that pleadeth a release in an assise, may well at all times relinquish it, and plead to the assise, and that by Bailiffe, 11 *Ass. P. 23.* So in Wast, he which pleadeth a Grant, that he shall not be impeached of Wast, may relinquish it, and plead no Waste done, but it seems it was *ex ascensu* there, *M. 38. Ed. 3. fol. Waste 66.* and in trespassse or detinue, the Defendant may relinquish the Issue, and plead to the point of the Writ, 2 *Ed. 4. fol. 14. & 15.*

In an assise against many, two as Tenants plead ancient Demesne, the Plaintiffe saith, that they all did disseise him to the use of one of them who pleaded ancient Demesne, and he made a Feoffment to persons unknown, and took the Profits; and to the Plea jointly pleaded, no Law &c. Now he as sole Pernor of the Profits, would have pleaded the same Plea to the Jurisdiction and could not, for he shall not have a new Barre in another degree than he took it before, 21 *H. 6. f. 57. Ass. 38.*

And see, in a Formedon against the husband and others, they say that a stranger enfeoffed them to the use of the wife, so they took the Profits in his name not named, this is a good Plea, for if at first they had pleaded generally *non tenure*, and the other averred him Pernor of the Profits, as he is, he shall not plead joyntenancy afterwards, nor in Barre as Pernor of the Profits, nor he shall not vouch. So in an Assise, but shall answer to the taking of the Profits, or traverse the Disseisin, *M. 3 H. 7. f. 2. & f. 13.*

Where in an Assise against Husband and wife, they plead, and for some cause the Justices will not take the assise at that day, the husband and wife shall



shall not change their Plea afterwards, but she being received upon his default, may well plead another Plea, 11 H.4. fol.2. Aff.46. So where husband and wife plead a recovery in a *scire facias* upon a Fine against T. and the Plaintiff sheweth, that one of the ancestors of the Wife had execution before &c. Now they shall not say, that T. was Tenant for life of the Lease of the plaintiff &c. and the plaintiffs prayed that their appearance might be entred specially, and the wife ousted of receipt, 29 Aff. P.1. Aff.275. Of pleas after adjournment upon plea certain, vide *Divis.13.*

If the Tenant plead in Barre, and afterwards wave it, *Shard.* would inquire of the Seisin onely, and upon that found, judge of the disseisin, as well of the Land as of the Rent, and this, although the deed confesse not the oustre, 13 Ed.3. Aff.117.

He which hath pleaded a Barre, he cannot wave it, and plead to the Writ after Title made by the plaintiff, 1 Aff.P.17. Aff.181. but if he plead a Rent charge, and the Plaintiff intitle him to a Rent service, he may well plead again, 12 Ed.4. Aff.32. vide *Divis.1. & 2.*

An afsife was adjourned, and an Infant who had pleaded an outlawry in Barre, was received to plead a release in Barre at another time, 14 Aff. P.15. Aff.203. so it was said, where he failed of the Record, 36 Ed.3. Aff.443. vide *Divis.13.*

But vid. E. 26 Aff. P.3. That if he plead a Deed or Record, and fail, that he may plead to the afsife after, but not in Barre *de novo*. So upon a recovery pleaded against an infant, and found against him, he shall plead over to the afsife, but not a new Bar, 28 Aff.P.52. *Divis.1.*

In an afsife, the Tenant pleaded a Bar, which the plaintiff denied, whereupon the Tenant takes it back, and said, that was he in by Feoffment without wrong, but he was compelled to shew the Deed to the Court, and take Issue upon it, or else he should be committed to the Fleet, 41 Aff. P.20. Aff.344.

See in Trespasse, if the plaintiff reply to the Barre the same day, and the replication is not entred, the Defendant may well wave the Barre, and plead a new, 7 Ed.4. fol.8. But if the plaintiff proceed to imparlance, when he returns to plead, the Defendant shall not change the Barre, but may plead that he is in without wrong, 40 Ed.3. fol.48. and this was after he had imparled at the replication of the plaintiff &c.

The plaintiff prayed the afsife, the Tenant saith, that he hath pleaded in Barre before, yet because these were new Justices, it was held that he should plead *de novo*, and the old plea is not now upon record. But afterward, because the chief Justice was the same that was before, although that it were by a new warrant, it was holden that the issue should be upon the old plea, if he shewed it, and they confessed it &c. H. 19. Ed.2. *Afsife* 406.

The Defendant shall plead to the point of the Writ, after that he had pleaded in Barre; in no *Pracipe* of Land, but in *mort.d'anc.* and Afsife,

as in Cofinage a Fine of the same ancestor was pleaded, Judgement &c. If the Plaintiffe make Title by a grant back again to the ancestor, the Tenant shall not plead another Bar, nor traverse the point of the Writ, but shall answer to the replication, *per Finch 40. Ed. 3. fol. 19. Bracton contra fol. 226.* Partition was pleaded in a proper person, and a demurrer upon it, because he which pleaded it was in by disseisin, and after the other pleaded to the Assise; *11 Aff. P. 23. Barr 151.*

**XXIII.** *Where a man shall plead Barre and conclude, so in without wrong, and where the matter shall be inquired, and where not, and what Replication thereto.*

**I**N an Assise the Tenant pleaded a Feoffment of *7. S.* and so in without wrong, the Assise takes upon them to inquire of the Seisin and disseisin; without inquiring of the doing wrong, and it was good; For this is but a conveyance, and a Feoffment of *7. S.* shall not purge the disseisin before *8 H. 4. fol. 14. Assise 42. vide 41 Affise. P. 20. Divis. 21. F. vide Divis. 1.*

A woman Tenant pleaded a Fine of *7. S.* to her and her husband, so in without wrong &c. *M. 11. Ed. 3. Aff. 88.* Of the Replication thereof, *vide Divis. 24.*

The one Tenant pleaded the dying seised of his ancestor, and the descent to him so &c. the other pleaded the same dying seised, and the Land holden of one *I.* who was seised &c. and granted it unto him so &c. The third said, that she held in Dower of the endowment of the same ancestor, and of the assignment of the said *I.* and did not conclude so &c. but that she was ready to be attendant to whom &c. the Assise was taken without any Replication, and it was found the Ancestor did not die seised, but the assignment of Dower by the disseisor or his minister was held good *M. 13. Ed. 3. Aff. 00. Divis. 1.*

The Tenant said that his Father was seised, and enfeoffed *G.* who gave it back again to him and his wife in speciall tail, the father dyed, the woman died, the son as their issue enters, in whose possession *G.* released, so &c. The Assise was taken without replication, the Grant found, but that a divorce was made between the Donees by a precontract of the wife, and that the plaintiff, sister and heir of the husband, was seised after his death, untill the wife and this Tenant ousted her, but the Title of the Tenant is good by the Release of *G.* in Reversion, *13 Ed. 3. Aff. 91.*

The Bailiff pleaded a Title, so in without wrong &c. the Plaintiffe shall not reply, for if it be found for him, yet the Assise shall be taken in point of the assise, but being found against him it is peremptory, but he may give his matter of replication in evidence, although it be not in the Roll, *12 Ed. 3. Aff. 113.*



**XXIV.** *What Barre shall be good in an assise of Rent.*

**I**N an Assise of Rent service, the Tenant shewed, that the King seized it for alienation without licence, and granted it to hold of himself, and after the Tenant sold it to us, and the Plaintiff said that the alienation was in the time of King *Hen. 3.* when it was lawfull to alien without licence, and this was held a good plea, &c. *M. 20 Ed. 3. Ass. 122.* See more *Divis. 13.*

*Vide Divis. 6. C. G. & Divis. 17.* throughout, chiefly *D. R. M. E.* of Barre to compell the Plaintiff to make his title, *vide Divis. 15.* throughout.

**XXV.** *Where an assise shall abate by Entry, use of Common, or for distreining for the same pending the Writ.*

**A**ssise of Rent shall not abate by distreining for homage pending the Writ, otherwise it is, if he distrein for Rent of any term, &c. *Ed. 3. fol. 7. Assise 63. 12 Ed. 4. fol. 11.*

If my Bailiff distrain without my knowledge, it shall not abate my assise pending &c. but by my agreement after it shall abate, *M. 20. Ed. 3. Ass. 397.* So if my Bailiff enter depending my Writ of Land, *39 Ass. P. 18.*

*Cessavit* shall abate by a Distresse taken by the demandant depending the Writ, although that the land was open to his Distresse at the time of the Writ brought *Trin. 20 Ed. 3. Ass. 33.*

To use Common depending the Assise, shall abate it, which it shall not do if his beasts come there without his assent, *33 Ass. P. 22. Ass. 310.*

**XXV. 1.** *Where in an Assise of Rent or land the Tenant gives name to the Land in view, the Plaintiff shall make a new assignment, and shall set forth what is the other.*

**I**N an assise of Rent the Tenant saith, that the Land in View is 40 Acres parcel of ancient demesne, the plaintiff saith, that the Land is a messuage and 20 acres of Land, and makes title; the Tenant saith, that this Messuage and 20 acres of Land are in another town, and upon this issue is joyned: the Assise saith, that one Grange, Dove-house, and 40 acres of Land were in view, and none other thing, and that out of it the Rent issued, and were in the same town &c. and adjourned for the difficulty, *8 H 6, fol. 612. Assise 5.*

The Tenant said, that the Land whereof &c. is one acre *hors de son fee*, the Plaintiff saith, that it is a Messuage, and held to be good pleading, and that it is another then the tenant hath said, and if the plaint be of an acre of Land, the tenant may say, that it is an acre of Wood. Judgement &c.

*Bryan M. 2 H. 7. fol. 4. Afsife 34.*

In an Afsife of four Messuages, the tenant saith, that they are four tofts, it is a good plea to the Writ, 26 H. 6. *Afsife 34.*

And in an Afsife of a Mill, if it be found that the grinders are all upon the Land of the Tenant, and residue of the house, and two posts, which bear the grinders are upon the Land of the Plaintiff, the Writ shall abate because the Plaint should be of a Messuage, 44 Ed. 3. fol. 13. *Afsife 455.*

An Afsife of 40 acres, and 10 s. Rent, the Defendant said, they are but 20 acres and 5 s. and this he entred without wrong doing, and it was found 40 acres &c. 14 Ed. 3. *Afsife 108.*

Afsife of the Mannor of Clo. the tenant saith, that the Land in view was but two Messuages and two acres, and pleaded a Fine thereof in another town, 6 Ed. 3. *Afsife 168. Divis. 13 E.*

The Plaint was of acres, pastures, a Messuage; the Defendant answered as the nineteen parts of the Land, and pleaded a grant of *L.S.* by Deed inrolled, the remainder to the King, and the Deed was of an office, wherefore the Plea was holden to be naught, but he ought to shew that the Land was appertenant to the office, and that he granted the office *cum pertinent.* &c. and then it had been good 7 H. 7. fol. 28. *Af. 332.*

If the tenant plead a Barre to one rent, the Plaintiff may well make title to another, for he may have 20 rents out of one Land, 9 H. 7. fol. 7. but if he demand 2 s. rent, and the tenant saith, that he holdeth of the plaintiff as the Mesne by a Rose, and that this is extinct by purchase of the Lord Paramount of the tenancy &c. It seems he ought to say, and if the Demand be a rent charge, Judgement, whether without title, & 7 Ed. 3. fol. 20. *Af. 133.* but if the Demandant make title in the Plaint, the tenant shall plead to it at his perill, 15 Ed. 4. fol. 24.

But it was holden, that in an afsife of Land Seisin of 20 acres, or in a Writ of entry, or in a *Præcipe* of so many acres certain, the tenant need not give them a name, but shall plead at his perill &c. P. 5. H. 7. fol. 28.

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XXVII. Where a Patent shall be pleaded, what Patent may serve, and in whose hand the Patent shall be.

The Patent of afsife shall be in the keeping of the Plaintiff, but when he is received, it shall be inquired if he have delivered it to the Clerk of the Afsife, for otherwise he hath not warrant &c. P. 33. H. 6. *Af. 460.*

If the Plaintiff hath not his Patent, the Justices have not power to hold Plea,



plea, but the assise being adjourned for the difficulty, day was given to have the patent &c. *M.8 R.2. Assise 368.*

If at an assise the Plaintiff shew not his Patent, yet the Jury shall be called, and if it remain for want of Jurors, day shall be given untill the next Sessions, and it is sufficient that he shew his Patent there, before the assise be awarded, *83 H.4. Assise 358.*

In an assise it was demurred whether the Commission of *Oyer and Terminer* to one Justice was determined by a new Commission to another Justice, and it was holden against the Plaintiff, who prayed time in the Countrey upon the same plea, because he hath other matter; the Defendant demands the Patent, the Plaintiff saith that it is in the Countrey, and prays adjournment, upon condition that if he hath the Patent he will proceed, and if not, that he should be non-suit, and so it was done *ex assensu partium*, *34 Ass. P.8. Assise 312.*

A generall patent is sufficient to take an assise without any more, when the Justices will, *29 Ass. P.40. Assise 285.*

Lessee of Land of a Prior aliened in the time of war, had aid of the King, and after a *Procedendo* the Tenant excepted against it, that the Plaintiff had no Patent. *Thorp*, We are not charged now with this, because we are out of the Countrey by a Plea in Law, but it is sufficient if we have it at the taking of the assise in the Countrey &c. *29 Ass. P.21.*

There was an ancient assise, and although the Plaintiff had not the Patent, yet because nothing was done therein, it was given back to the Plaintiff without abating, *36 Ass. P.33.*

The Patent shall be made 15. dayes before the day of assise, *30 Ass. P.44.*

A Patent for divers assises in divers Counties for Rent of both in common &c. *5 Ed. 4. Divis. 18. B.*

If the Patent vary in the assise in the Christian name, it shall abate, be it of the Justices, or of the Parties, so of the Surname: But where the Patent was *Tibi Precip.* where it should be *Vobis*, it was held that it might be amended, *Trin.27 H.6. Amendment 34.*

And if more were named in the Patent then in the assise, the Writ shall abate. So if there wanted such a Clause, *in brevi nostro original. content.* *22 Book of Assise, Writ 760.*

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XXVIII. Where a Writ of Assise shall abate by Title made, or by the Verdict, and where the Verdict is good against the Confession of the parties, and where not.

**V**Pon hors de son fee pleaded, the Plaintiff makes Title as Person, not naming himselfe Person in the Writ, it shall abate, *12 H.4. fol. 20. Divis. 17.*

In an afsife of Common, he made title as appendant, and laid the seisin as appendant in *W.* and it was found that *W.* was seised as appendant, but he had nothing in but at will in the Land to which &c. now this last is void, because it is against the Confession of the party, whereby the Plaintiff recovered, *M. 15. Ed. 3. Aff. 94. Vide 27. A.P. 30.* Afsife for feed in his severall, the Defendant claimed Common, found the severall of the Plaintiff, damages assessed, but that the Defendant shall not common there but by sufferance, this last is void, *Vide Divis. 34.*

Infant pleaded, never married, against a woman who claimed as Tenant in Dower. The Bishop certified that they were married, but found not the Disseisin, wherefore he took nothing, *28. Aff. P. 51. Afsife 274. vide Divis. 1.*

When a release or other bar, she confesseth further is pleaded, and it is found false, and further that the Plaintiff was not seised &c. this later is void &c. *40. Ed. 3. fol. 48.*

So if upon such bar pleaded, the Plaintiff make title, and this is found for him, but that he was not seised, this is void, and the Plaintiff shall recover, *28. Aff. P. 34. 272.*

So it is where the Plaintiff is an Infant in the like case, for the Verdict at large shall not hurt him, *7. Ed. 3. 71. Aff. 139. vide Divis. 1.*

A Plaint made of a Mill abated by Verdict proving, that it ought to have been of a Messuage, *44. Ed. 3. fol. 13. Divis. 25.*

In an afsife upon *N. v. tort.* pleaded, the Disseisin found, but that the Tenant held jointly with one *T.* not named, the Writ abated. *H. 33. Ed. 3. Aff. 457. 35. Aff. P. 5. Aff. 321.*

Upon a bar pleaded, which confessed the Ouster, it was found for the Plaintiff, but that he had not named the Disseisor in the Writ, yet the Plaintiff recovered, *44. Ed. 3. fol. 23. Aff. 58. 39. Afsife P. 16.* where the Tenant pleads the bar, and where he that is not tenant indeed. & *Divis. 2.* failing of a Record, but if the Tenant plead a bar, that he doth not confess as a Villain, and this found against him, but that the Plaintiff was not seised &c. the Writ abated, although the issue was out of the point of afsife, *31. Aff. P. 12. Aff. 305. Finch* saith the reason is, because this Plea goeth to the person only, *40. Ed. 3. fol. 48.*

An afsife of 20 s. Rent, they found two rents of 10 s. he recovered the one 10 s. *17. Ed. 3. 52. Le case Divis. 17.*

An Abbot and another recovered in an afsife, the Collusion was inquired of and none found, but that the Plaintiffs had several titles, yet because this was not pleaded, and it was only an inquest of office, the Plaintiff recovered, *16. Aff. P. 1. Aff. 205.*

In an afsife against two, the one pleads joyntenancy, the Plaintiff chooseth the other for his Tenant, the joyntenancy was found by Verdict at large by feoffment the day of the purchase of the Writ, and the Plaintiff recovered, *P. 18. Ed. 3. Afsife 77.*



In an Assise the Tenant pleaded a gift in special tail to his Father and Mother &c. and the Deed found, but that they were divorced for a precontract of the Mother, and that the Plaintiff entred as Heir general of the Father, after the Tenant entred, and had a Release of the Donor, and upon this Verdict he recovered, 7r. 13 Ed. 3. Aff. 91.

When a bar pleaded is waved, and the assise at large, because he pleads not after to the Writ, yet upon this found by Verdict, the Writ shall abate, 1 Aff. pla. 17.

In an assise the party was not estopped to say that he was of full age, although that he had suffered him to appear by his Guardian, and the assise found him of full age, yet the Court adjudged him within age, so the verdict void, and the Writ abated, 25. Aff. p. 2. Aff. 231.

In an assise against two, the one pleads a release, the other jointenancy, and the joyntenancy was found, and that he which pleaded the release set to the seal of the Plaintiff, and sealed the Deed, and that the Plaintiff is a Lay-man, not knowing what was writ &c. nevertheless the Writ was abated by the Court, 44 Ed. 3. f. 23. Writ. 576.

**XXIX.** *When the Assise giveth a Verdict at large, and further, that the Plaintiff was seised and disseised, where the Judgment shall be according to the Verdict at large, and where upon the seisin and disseisin only.*

**I**N an assise of Rent, attornment to the Plaintiff was found after the death of the Grantor, and that the Heir released to him in his possession, though now upon the matter the Plaintiff is not disseised, yet if seisin and disseisin be found, he shall recover, 16. Ed. 3. Aff. 74. 16 Aff. P. 15. Pigot thought, that this was not the principal cause of the Judgement, and *Quere* of the release.

If in an assise at large speciall matter be found, and also seisin and disseisin, the Court shall adjudge according to the speciall matter first found, 28 Aff. p. 17. 32 Ed. 3. Aff. 99.

Where the Tenant pleaded a recovery against the Father of the Plaintiff, he made title by discent of the Grandfather to the Father, and so to him, and found by verdict at large, that the Tenant recovered, but the Father died before Judgment &c. yet the Plaintiff was barred, for this shall not be avoided without a Writ of Error, 28 Aff. P. 17.

In an assise by a woman, it was found that her Husband was seised of the whole, whereof two parts now are in demand, made a feoffment, and took again to him and his Wife, in special taile, and died, the Lord had the Wardship of the Heir, and granted it to T. who assigned the third part to the Plaintiff in Dower without Deed, and also gave her 20 s. to hold

hold her content, so she was not disseised, yet she recovered by Judgment upon the special premises, against the expresse Verdict. 17 *Aff. p. 3. Aff. 208. H. 17. Ed. 3. fol. 6. Estoppel 217.*

An assise of Rent by an Abbot, it was found Rent-service, and that B. his Predecessor with the Covent, did release unto the Tenant all their right &c. This is a good Deed, but it was not shewed to them, and the Abbot distrained, and the Defendants made rescous, and upon the Disseisin found, he recovered, though the meaning of the Jury was, to bar him by the Premises, 7 *H. 6. Aff. 359.*

The assise said, that the Defendants agreed to the Disseisin made to their use, and being demanded, wherefore? they say, because they made not the Disseisor to agree with the Disseisee, and it was adjudged no agreement, 37 *Aff. P. 8. Aff. 329.*

Upon a Release pleaded in bar, the Plaintiff said, that he who pleaded it was Tenant at the day of the Writ, and hath aliened it pending it by another name, and recovered against him by collusion, and upon this matter found, and seisin and disseisin, the Plaintiff recovered, 25 *Aff. P. 1. Affise 230.*

Title was made to Common as appendant, and unity of possession found in the Lord, and that he was seised and disseised, whereby the Plaintiff recovered, for it is sufficient in an assise, if seised as appendant &c. 5 *Ed. 3. fol. 15. Aff. 167.*

In an assise the Tenant pleaded a recovery, so in *sancti tort.* and it was found that he brought a *Præcipe* against A. and B. depending which, the King demised it to him, and after A. and B. enfeoffed the Plaintiff, and the Tenant sued a ressumons against A. and B. and recovered, and had right, and the recovery was in a Town of another name, but the Assise said, that all is the same Land, and the place where the assise is brought is a Hamlet of the same Town &c. yet all was held void, and the Plaintiff recovered, for that he was found in by Feoffment &c. P. 14 *Ed. 3. Verdict 29.*

It was holden, if an expresse verdict be given, and after examination they say the contrary, yet judgement shall be given upon the premises. But if they upon their agreement say further, and conclude to the contrary, it is otherwise, 3 *H. 4. fol. 19.*

In a *Trespas de parco fracto*, the Issue was, whether the Wife of the Plaintiff delivered the beasts, or whether she did beat &c. and it was found that the frankpledge of the Town delivered them, and not the wife, and that she did not beat. *Seton*, where the verdict is doubtfull at the beginning, and afterwards expresse, we will give our Judgement according to that which is expresse; also the Plaintiff traversed not, that the wife did not deliver them, but took issue upon the beating, whereby he shall take nothing if any other delivered them &c. M. 30. *Ed. 3. fol. Judgment 147.* and this last was upon demand.

Where in a conspiracy against two, the one was found guilty, the other not, the Jurors were put together again, because this is inconvenient &c.



&c. and now they were found guilty, *M. 11. H. 4. fol. 2.*

In an affise the Tenant said, that his Father died seised &c. and the Plaintiff was found sister and Heir of her Father, and that the Tenant was born within the espousals, but was not the Son of the Father, and the Justices had no regard to this last matter, although that the Jurors said, that the Father was in *Ireland* when the Tenant was begotten &c. *M. 13. Ed. 2. Bastardy 25.*

Issue upon the Plea, that no tenant was named in the Writ, and jointenancy proved: This is good for the Plaintiff, *33 H. 6. fol. 40. Aff. 19.*

**XXX.** *Where a man shall have an Affise for divers things, as for Land and Rent, and where for Corody and Land, and where of divers Estates.*

**A**N affise of 2 s. Rent upon several reservations, *17 Ed. 3. fol. 52. Aff. 76.*

In an affise of Land and Rent, and found the Rent reserved upon two acres Leased, reserving 12 d. upon the one acre to him and his heirs, and 12 d. upon the other acre to him alone, *P. 11. Ed. 3. Affise 86.*

In an affise of Land and Rent, and found that to the part of the Land, that it was given to the Plaintiff by Feoffment with the Rent, and to the Residue by grant of the reversion with attornment of the Tenant for life, *Tr 14 Ed. 3. affise 108.*

In an affise of divers Rents and a robe, and the arrearages &c, by divers Deeds, and one Deed concerning all, *12 Ed. 3. affise 112. Vide Div. 17.*

An affise for reasonable estovers in a Wood for burning, building, inclosing &c. and for reasonable estovers to dig Turfs in a Moor to cover the house, and to burn, good. So an affise of halfe an acre of Land and of a Corody, *M. 7 E. 3. affise 138.* So of Land and of estovers, whereof the one at the Common Law, the other by Statute. So an affise for two Rents &c. *7 aff. P. 18.*

**XXXI.** *Affise of Nufance where it lieth, and for what things, and the bar, and title in it.*

**I**N an affise of Nufance of water misturned, whereby the Mill could not grind, now although that all the profit be restrained, yet because the Nufance was in another Town then where the Mill was, the Writ is good. *But*

But some say, that if it were in the same Town, he might have an affise of *novel disseisin*, 9 *Aff. pla.* 19 *Aff.* 194.

An Action of the Case lyeth against severall Tenants for Nufance done, and was brought for disturbing the high way over the Land of the Defendant to the house of the Plaintiff, and it seems he shall not have this action, but of Nufance, as for raising a Dike crosse the high way towards the Land of the Tenant, and if part of the water run another way from my Mill, *Marckham* saith, that Nufance lyeth, and not an action of the Case, and after Nufance abated, he shall not have an action upon the Case, because he might have had it before &c. 2 *H.4. fol.* *Action upon the Case* 24.

*Vide* 14. *H.8. fol.* 38. against *Marckham*, that he shall have an action upon the Case, and shall not be put to Nufance, where but part is restrained, &c.

Nufance for raising a house a crosse his way, which he hath from his Meadow to the high street &c. and good, as of a way claimed from his house to his Meadow, or to the Church, and although he be ousted of all the profits, he is not put to a *novel disseisin*, and it is a good Bar, that the Nufance was raised in the time of his Predecessor, and if &c. that the Plaintiff had no way but by sufferance, so in without wrong, 20 *Aff. P.* 18. *Aff.* 218. and be the way in part, or in all altogether estopped, Nufance lyeth &c. 18 *Ed.2. Aff.* 374. for if he recover in Affise of *novel disseisin*, yet the Nufance shall not be holden away.

In Nufance, *Quare divertit cursum aque* from his Mill, and also from surrounding certain acres of Land adjoyning, so that it grinds not so much, nor bears so much hay as it was wont, it is a good Count, the Defendant pleaded to the Affise, and found for the Plaintiff *scil.* his freehold, and holden, though the freehold be to the Plaintiff, yet by the Nufance made, the freehold shall be adjudged to the Defendant, and the Writ was good supposing it, and the plaintiff recovered, and his damages, and the Nufance was taken away at the charges of the Defendant, 32 *Aff. P.* 2. *Aff.* 309.

So note, the Action lies against him who levies a Nufance in my freehold to my self &c. But if a Nufance be levied in another mans freehold to my Mill &c. there the Action of the Case lieth, and not of Nufance, by *Prisot.* 33 *H.6. fol.* 29. But see what Trespasse or action of the Case shall abate, as being brought against the Tenant of the soil for Nufance levied in his own ground, and is put to Nufance, 31 *Ed.3. Action upon the Case* 38. *Infra H.*

An Affise of a faire levied as a Nufance to his faire, the Defendant shews a Charter from the King &c. Now the plaintiff ought also to shew his Charter before, or to have prescribed &c. *Trin* 4. *Ed.2. Aff.* 448.

A Nufance against two for casting up a Dike in the high way, that the Plaintiff hath over their Land &c. they say, that they have nothing in the Land but imparcenary, and if it be not found &c. that at the time of the Nufance, the Land to which &c. was in the possession of one *R.* who enfeofed the Plaintiff, &c. and prayed that it might be inquired &c.



and it was found for the Plaintiff, whereby he recovered *M. 18 Ed. 2. Aff. 374.*

Nuisance for not repairing a house adjoining to the house of the Plaintiff, whereby the rain came upon the Plaintiffs house, and upon his walls &c. so that the timber and the walls were perished, and so that he could not repair his own house, and good, *18 Ed. 2. Aff. 375.*

If I have a Mannor, and one holds a house of it by Rent, and I have a way from my Mannor to the house, to distrain for the Rent which is payable twice in the year, now although that it was never arrear, yet if the Tenant stop the way, so that I be constrained to go by another way, I shall have a good Assise of Nuisance, *M. 34. Ed. 1. Aff. 411.*

Nuisance for making of a Pond, so that where turfs were used to be carried, now he is constrained to go three miles about in Circuit, yet because the Lord, and all the Freeholders were agreed that the Pond should be made, so that no man could carry turfs over the trench for some certain cause profitable to the Town, it was held that it should bind the Plaintiff without his agreement, *8 Ed. 2. Aff. 413. vide 21 H. 7. fol. 40.*

And see, that the like agreement between the Parishioners shall bind them who agreed to it, if it be but onely for the profit of the Town, and not for the common profit of the Realm, *44 Ed. 3. fol. 19.*

Nuisance for making of a pit whereby the Water of my Mill is disturbed, and runneth not so readily as is wont, is good, without supposing stopping, streightning, or disturning. In like manner, if the Plaintiff be disturbed of his fishing by it, and supposeth not the fishing to be appendant to any Freehold, for it is it self a Freehold, and as to the Mill issue was taken, that the pit was a mile from it, so that the water takes it full course again, &c. so not to the Nuisance &c. *Quere,* and to the fishing he said, that the place where the pit is. &c. was his own severall fishing &c. *Temp. Ed. 1. Aff. 422.*

*Nusans, quia prostravit sepem ad nocumentum*, &c. Barre, that it was cast down by the Kings Writ directed to the Sheriff, *5 H. 3. Hin. Aff. 426.*

Nuisance of water misturned, the Defendant appeared and said nothing, the Assise said, that the water was misturned before the Writ brought, but not to the Nuisance of the Plaintiff till after the Writ brought, wherefore he took nothing by the Writ &c. *P. 16. H. 3. Aff. 430.*

If termor of Land with common appendant, be outed of his Common by making a Dike, the Lessor may have an Assise of Nuisance, *23 H. 3. Aff. 437.*

Trespasse for stopping an open place, by which the fish of the Plaintiff have not water, he saith not, that the open place was made in his soil, or in the soil of the Defendant, and it needeth not, but the other may say, it is his own soil, and thereupon the Writ shall abate, for he is put to his Assise of, and this Writ *vi & armis* doth not lie &c. *P. 31 Ed. 3. Action upon the Case 28. vide supra D.*

If one Tenant do stop &c. all the Tenants through whose Lands I have a way, shall be named in the affise of Nufance, 33 H. 6. fol. 29. *Action upon the Case* 13.

If a man ought to repair a Bridge, by which I have a way from my freehold to the Church, or to go and carry without limiting, to what place to carry, and he repair it not &c. I shall have an Action upon the Case, and not of Nufance: so if my Land be furrounded by not scouring of a Dike &c. for these lie in *non feafance*, but if he stop a Dike &c. Nufance lieth, *Tr. 11. H. 4. fol. 81. Action upon the Case* 30.

XXXII. Of what thing an Affise lieth, and where of Tithes, Toll, the Church yard, Passage.

**A**ffise of Tithes of the tenth part after the Tithes paid to the Parson, for the Abbot the plaint is good, and of this manner of Tithes this Court shall have Jurisdiction, 44 Ed. 3. fol. *Jurisdiction* 49.

The Vicar shall have an Affise of the Glebe against the Parson, but it was denyed that he shall have an affise, or trespasse of the Church-yard against him, because it is spirituall, but *Thienn.* said, that it is his Freehold, and so tryable here, *T. 13. R. 2. Jurisdiction* 19. *Quare.* *W. 11.*

It was held, that the Statute which gives an Affise of Toll, gives it of Toll of the Marker, and not of the Toll of the Mill, upon which such an affise was abated, 3 Ed. 1. *Affise* 401. But it seems by *Herle*, that an affise lieth, for the Toll of a Mill, of corn growing in such a place, but not to be spent in such a place &c. 19 Ed. 2. *Aff.* 399. yet in the first Case the Affise was for the Toll of Corn growing &c. and abated *Aff.* 401.

Affise lieth not of suit to a Mill, *ut de libera tenemento*, 6 H. 3. *affise* 425.

But see that Tenant in Dower of a third part of a Mill, shall have the third part in severall discharged of Toll, and if the heir take all the Toll, she shall have an affise against him, 23 H. 6. *Aff.* 435.

Affise *de libero Tenemento*, and plaint of a fishing, and found that the Tenant and the Plaintiff had common in the fishing there, and that the plaintiff is seised &c. whereby he took nothing. 12 H. 3. *Aff.* 427. and in an affise of common fishing, because the profit is in the others soil, he was compelled to make his title, 34 *Aff. P. 11. Aff.* 316.

Affise of a passage *ultra aquam* in his boat with his young beasts, oxen, and horses. It is said, the Affise lieth not of the office of a Forrester in right of the office, but in right of the profits, and here grows no profit, but easement.

But it seems, that Affise lieth of a passage, which is profit *ultra aquam*, so of Portage and Tonnage by the Statute, 23 Ed. 1. *Aff.* 440. *Plaint*



Plaint of a Tenement, of a garden adjacent, so of one Toft, but *Præcipe quod reddat* lieth of them, 22 Ed. 4. fol. 13. Vide 8 H. 6. acc.

XXXIII. Where an Assise shall be turned into an Inquest, and taken in the nature of an Inquest by Nisi prius, and where in a forrein County.

**A**ssise against three, the one pleaded a release, which was denied, the other pleaded to the Assise, and awarded as Assise against them, and as a Jury against him who pleaded the release, Tr. 12. Ed. 3. Ass. 27.

In a Writ of Entry, a release was pleaded, and depending the Issue, the Plaintiff brought a *mort. d'ancestor* of other Land comprised in the same release, being in the hand of the Justices, and thereupon adjourned into the Bench, and it was sent to the Justices that bring the Deed, the same day was given in the Writ of Entry, and the Assise, and at the day the Inquest appeared, which was for both the Writs, and the Tenant made default, and *Petit cape* was awarded upon the one Writ, and the other, and he made default another time again, whereby Seisin was awarded in both the Writs without damages, because the Assise was turned into an Inquest, Temp. Ed. 1. Feoffments 112. Quere of the Case, for in a *mort. d'ancestor*, the Proceſſe is Summons and resummons, and not *Petit Cap.*

In an Assise against 7 and W. 7. saith, that he entred by W. to whom the Plaintiff hath released, and thereupon the assise is charged in nature of an Inquest, and shall not inquire further of the Seisin or Disseisin upon the release proved false, and some said, that in such case where the Issue is upon the release, and the Assise taken in manner of an Inquest, the others who pleaded to the Assise are without day, H. 19 Ed. 2. Ass. 408.

XXXIV. Where the Defendant may plead to the Writ after he pleaded to the Jurisdiction, and where in Barre, and what Pleas the Defendant may plead, when the Plaintiff is within age.

**T**he Tenant pleads to the Jurisdiction, the Plaintiff makes a new assignment, the Defendant saith, that it is in another Town, 8 H. 6. fol. 12. Divis. 25. A. 21 H. 6. fol. 57. Divis. 31. B. 21 A. 21 H. 6. fol. 57.

It is said, that the first exception shall be to the jurisdiction, then to the Person, then to the Court, then to the Writ, then he may plead in Barre, M. 15 H. 6. fol. 14.

But matter apparent in the form of the Writ he may plead, before he plead to the Jurisdiction, 8 Ed. 4. fol. 13. & 5. and it is said, that the exception

tion may be to the Writ, before it be to the Count, if there be not matter apparent, which *ut amicus curia*, he may plead before to the Writ, 19 H.6. fol. 10.

In an Assise, it is no Plea to say, that the Plaintiff is of full age, where he is received by his guardian, if he plead not a release, or other thing done by him, as being of full age, and upon such thing pleaded he shall not be estopped to averre him to be of full age, because he hath admitted him by guardian before, and the plaintiff being adjudged within age, the Tenant pleaded the same plea in Barre, which he had pleaded to the Assise before. *M. 12 Ed. 3. Ass. 116. 12 Ass. P. 37. Ass. 201. Divis. 5.* where he shall plead to the Assise or in Barre against an Infant, *vide Divis. 46.*

*Vide 48 Ed. 3. fol. 10.* that he who hath accepted an Infant by Attorney shall be estopped to say afterwards that he is within age &c.

**XXXV. Assise for Tenant by Statute Merchant, Staple or Elegit, of often Distresse, or to depasture his severall.**

**T**ENANT by Statute Merchant, brings an Assise, and depending it the Term expires, it seems the Writ shall abate, as in Ward at the common Law, for he shall not recover here all in damages, as in Waste by *Paston, Quere, 11 H. 6. fol. Ass. 9. W. 2. cap. 19.*

If the Tenant say, that he is not tenant of the freehold named, the Plaintiff may well say, that the Tenant entred claiming by grant of the Tenant by Statute Merchant, who had granted to him his estate before, and a good Count, though another hold the freehold, 24 Ed. 3. fol. 31. *Assise 130.*

If damages be recovered against him, who is bound to me in a Statute, and after he enfeoffe me, he which is recovered shall have a good *Elegit* against me, and I shall not extend the Statute against him, 21 Ass. P. 28. 38 Ass. P. 4 Ass. 331.

Assise by Statute Merchant against an Infant, 28 Ass. P. 51. *Assise 262.*

Assise of Rent, and the Plaint, that the Tenant supposing that he held of him, distreined the beasts of his Plow, so that by often distresse, he could not take the profits of his Land, the Defendant justified for fealty and escuage &c. in right of his wife, and because they are not valuable, it shall not be intended, that it can be often distreined, the Plaintiff saith, that he holds not of the Defendant, but durst not demurre; for then the Assise doth not ly, nor of suit whose value cannot be extended, *Quere de fealty and homage*, but of the suit it hath been maintained, and the Tenant shall have this Writ against the Lord mediate or immediate alone, and he said, that he holdeth of S. who holdeth of the Defendant, and held a good Plea, 27 Ass. P. 51. Ass. 257. but *Fitzb. fol. 178.* saith, that it lieth of a rent charge, and that it lieth not for homage, fealty, nor suit, *vide 28 Ass. P. 50.*



In an Assise, the Tenant saith, that the Plaintiff himself is seised of the Freehold, the day *&c.* and yet is; this is but to the Assise. The plaintiff saith, that this is his severall, and the Defendant depastured it, and prayeth Assise by the Statute; the Defendant claims Common there, and found the severall of the Plaintiff to his damages, but they say, that the Defendant had not Pasture there, but by leave, but this is contrary to his confession; wherefore the Plaintiff recovered, and the Defendant was imprisoned. It was said, that this was against the Law, because the plaintiff took not advantage of the confession *&c.* 27 *Ass. P.* 30. *Assise* 253. *W. 2. Ca. 26.*

Assise for pasturing his severall, and there was turfs there. *Hanck*, it appears that the Freehold is the Plaintiffes, for the Record ought to make mention of the disseisin against the Statute, *Tr. 11 H. 4. fol. Ass. 16.*

*Vide per Fitz. fol. 178.* the Plaintiff in the Assise ought to waive the possession.

**XXXVI.** *Association, si non omnes, and how the Records shall be demanded upon change, or death of the Justices, and how the Justice in an especiall Assise shall demean them.*

**I**N Assise, the Patent of association was first to *J.* and afterwards another to *W. Newton*, when *J.* was admitted by the first Patent, the later to *W.* was void; for it was not directed to the first Justices, and to *J.* but to them onely. *Fort.* agreeeth, and in the generall assise they adjourn the Assise by Proclamation untill the next Sessions, and if the Assise be purchased after, there needs no new Precept, but in a speciall Assise, if they make their Precept before the day of Assise, it is void, and the Justices of a generall Assise ought to be there at the day, otherwise it is of a speciall Assise, if the party keep them not, then if the King associate one who will not come, I am in a mischief, whereby it seems in a speciall Assise no association lieth: and if the King associate two by severall Patents, the first shall be received, and if both at one day, it is at the choice of the Justices to have the one or the other, *M. 32 H. 6. fol. 12. Assise 17.*

*Fitzb.* saith, *fol. 186. 187.* that by the Register, associations lie upon association.

If the especiall assise have this speciall clause, *& iis quos sibi associaverunt*, it seems association well lieth, *Fitzb. fol. 186.*

If a Writ of Association be delivered to the Justices, and the associate hath not his Patent to shew to the Justices, they may go before without him, and he shall not be with them as a Judge, *&c. H. 5 Ed. 4. Ass. 459.*

A generall assise by two, whereof the one is associate to the Justice, this shall abate the whole assise, for he may not be his own Judge, and he cannot be nonsuit, to the intent that the other may sue alone, for the other Justice

Justice cannot award a non-suit without him, 44 *Ass. P. 3. Ass. 356. 34 Ass. P. 3. 8 H. 6. fol. 21.*

*Vide*, that one Justice of Assise with the Clerk took an assise *non expectata presentia alterius*. Yet he that was absent may certifie the Record upon a *Certiorare*, 11 *H. 7. fol. 5.*

If there be only two Justices, and the one, or the Chiefe is in the Kings business and cannot come, the King may make another Justice, and associate the other to him &c. 28 *Ass. P. 2. Fitzb. 187.*

If a Writ *de si non omnes* be generall for all the assises, it shall be entred upon record, and shall continue for the Justices for their Warrant to take other assises, but if the Writ be to take speciall assises, it shall be annexed to the record, and sent as parcel thereof when it shall be removed, 16 *Ed. 3. Ass. 73. 16 Ass. P. 6.*

Assise, all the Justices but one came, whereupon the Tenants pleaded the outlary of the Plaintiff, and it was said to them to have their record at a day, and at the day the Justices came not, and at the re-attachment the same Justices came, and one Tenant pleaded a Release, where he had pleaded to the Record before, because within age; and it was adjourned for the difficulty, at which day one of the said Justices came not, and the other which was with him before came, and the 3. who came not before. And it was holden, that the *si non omnes* which was before the re-attachment, should serve for the whole plea. They may also well record the plea pleaded before the re-attachment, for the record is entred before them, and have their commission with them &c. *Lege M. 14 Ed. 3. Ass. 110.* And the chiefe may send the records of one journey, abiding with him, without a Writ upon adjournment, 14 *Ass. P. 15. Assise 203.* and note, that in such case where two Justices are, and the association is with a *si non omnes*, and the one dieth, the second may proceed, *Fitzb. fol. 187.* and one patent is good for severall assises, *ibidem.*

If an assise be put without day, by the non-coming of the Justices, and after new Justices be made, a Writ shall issue to the old Justices to deliver the Records to the new ones, and this Writ shall not be indorsed, but the others shall deliver it by indenture with the Writ, 9 *H. 6. fol. 4. Ass. 7.*

*Vide* 1 *H. 7. fol. 9.* Of a fine taken in the Countrey, and the Justice dieth.

Justices of assise assess fines by their discretions, but amerciaments shall be assised, and they may command silence upon a pain, and imprison Jurors who will not take their oath, or fine them, and amerce the Sheriff if he will not return the speciall assise, *M. 7. H. 6. fol. 13, and 14.*



XXXVII. *When Proces shall be made, and when the Tenant shall be put to answer, and where the Assise shall be demanded and amerced.*

**I**N assise no proces shall be made against the inquest until the Plaintiff hath made his Plaint, for there is no Warrant before, 39 H.6. *Ass.* 24. 32 H.6. fol. 12. But see, that the Original it self contain *Venire fac. duodecim*, and the patent to the Justices that he hath sent the Sheriff to cause the assise to come, at what day and place the Justices shall assigne. And it seems this is intendedly the Precept which the Justices make to the Sheriff, *Sed Quare*. See the old *Natura Brevium*, fol. 208. What Precept the Justices in a speciall assise shal award, untill the day of the Assises. *Idem Quare*, M 32 H.6. fol. 12.

The Tenant would not answer until the assise was called, whereupon he was called, but not upon issues &c. P. 3 H. 6. *Ass.* 466. But a *Habeas corpor.* was awarded, and at the day they were called upon issues, and all agreed, M 37 H.6. fol. 26. and 27.

But in an assise where recovery in Dower was pleaded, and the estate of the Plaintiff mean, and the issue was upon *non comprise*, proces was awarded to Summoners and Viewers &c. and the Assise called, it seems to the intent that if they came not, they should be amerced, and if they came, there is nothing to do at this time. So upon a Demurrer, if the Justices adjourn the Assise, the Jurors shall be called from day to day, and yet it may not be taken &c. P. 48 Ed. 3. fol. 11. *Ass.* 65.

In an assise, at the first day the Defendant made default, the assise was awarded, and the Plaintiff called to make his plaint, and the Jurors made default, yet they were not amerced, but a *Habeas Corpora* awarded, 39 *Ass.* P. 17. *Ass.* 302. and it seemeth the Law in all inquests which are to appeare at the next day after any issue; if the tenant be essoind or make default, the Jurors shall not be amerced for not comming. Hen. 6. fol. 20. 1 H. 7. fol. 8. and so although the Tenant come at the first day, because he might have been essoyned, 1 Ed. 3. fol. 12. So to a *scut alias* after resummons, where the first *Venire facias* was not served, and after the plea was without day by demise of the King, & at the resummons, and a *Habeas Corpora* if the party be essoind, the Jury shall not be amerced. Otherwise it is if the parties appear &c. H. 6. fol. 20. *Quare*, if they shall be amerced where the defendant in trespass comes not at the first day after issue, because it is not another proces.

XXXVIII. The Form to enter the Pleas and continuances in all other matters.

**E**rror upon assise where at the first day of the assise, and the parties appeared, and being sworn, the assise remained for want of Jurors, and at another day the parties appeared, and the Jury were ready, and because no mention was in the Record that the two were sworn the first day, but in the backside of the panel, nor no mention of the first day, nor of the *Habeas Corpora*, it was held error, for if these matters, and that which was done the first day be not entred, they may plead anew, where peradventure they had confessed before &c. 38 H.6. fol.14. Error 39

Error upon an assise where the parties and Jury appeared, the entry was, *Juratores exacti vener. & assisa rem. capiend. eo quod quidam non fecer. visum, et quidam non apperver.* and it was held error. Hussey, if the Record were, *Quod Jurat. compar. quor. 12. super sacrum suum dicunt &c.* and not entred, *Electi & Jurati*, this is Error, although it is implied, *M. 1. R. 3. Error 48.* and the entry, *Quod quidam fecerunt visum, & quidam non*, is Error, but it should be, *Quod assisa remanet pro defectu visus*, 3 H.7. fol.13. Error 49.

That which is done the first day remains upon Record before the Justices newly associated, and if recovery be pleaded, and be entred that he had his recovery at the next Session, this shall be understood to be the Plea of the partie, and not the saying of the Justices, for they shall not say to the party who had his recovery at the day, 14 Ed.3. Ass. 110.

Assise in the Bench remaining for want of Jurors, the entry shall be accordingly, and by the panel the estreats shall be made, for the panel staves alwayes in the Bench, but in an assise in the Countrey it shall be entred that it remains, *Pro defectu talis & talis non jurator.* as before, and the estreats shall be made by the Roll, and the panel shall be delivered to the Sheriff, 12 Ass. P. 19. Ass 198.

XXXIX. Where the Tenant shall say that the Assise came upon the Title, and certain matter of Title to a Rent, or against a Deed pleaded, or by reversion, and whether he meddles with the Bar.

**C**olt brought an assise, the Tenant said, that his Father died seised, and gave colour, the Plaintiff, that after the discent T. was seised, and gave it to our Father in taile, who died seised, and we &c. untill &c. the tenant said, let the assise come upon the title &c. and well, by the better opinion,



as in all Cases where the plaintiff makes Title at large, or where he doth confesse and avoid the Barre, *ut hic*, if not where he conveyes from the Tenant himself, as it is said, that he enfeoffed him by whom the Tenant claimes upon condition and entred upon the breach, for there the Tenant ought to maintain his Bar, and shall not say, the Assise came &c. and in all Cases where the Bar is in traverse, the Tenant ought to maintain it, for the Issue tendred hath made the Bar materiall, *Tr. 1 H. 7. fol. 29. Assise 35.* and so *Fitzh.* reports, but in the Book at large, *Finex* and *Fisher* hold, that the Bar shall be likewise maintained when it is confessed, and avoided, and *Finex* saith, where the recovery is pleaded in Bar, or other matter, upon which the plaintiff cannot make his Title at large, the Tenant may not say, the Assise came &c. and so it seemeth to him when a discent is pleaded, *5 H. 7. fol. 30.*

See a good Case of this *32 Ed. 3. Assise 99. Divis. 1. 7. K.*

If a plea in Bar of the assise be naught, the plaintiff needs not make Title, nor answer to the Bar, but demur upon it. *20 H. 6. Tr. 11 H. 7. fol. 28.*

And where the Tenant pleads a Bar, and gives colour by Title after the Bar, the Plaintiff may well traverse the Bar without making Title, where the Tenant claims by discent as eldest, and the plaintiff is younger &c. it is sufficient to say, that the Tenant is a Bastard. So if the Tenant say, that he was seised untill disseised by *T.* who enfeoffed the Plaintiff, it is sufficient to say, that *T.* did not disseise the Tenant, or that he enfeoffed not the plaintiff, but if the Tenant plead a feoffment of a stranger, and that the plaintiff claims by Deed &c. now it is no plea to say that the stranger enfeoffed not the Tenant, but he ought to make Title, for the Tenant hath not given him Title in deed by the colour, *20 H. 6. fol. 38. 39. 5 H. 7. fol. 32. & vide de hoc 3 Ed. 4. fol. 20. 4 Ed. 4. fol. 17.*

It was said, that in Trespasse upon a Feoffment of the Plaintiff pleaded in Barre, he may say, that he was not enfeoffed &c. but in an Assise he ought to make title, *Quare 10 Ed. 4. fol. 9.*

Entry in nature of assise of Common, the Tenant saith, that he disseised not, and here the title is not comprised within the Writ, but he ought to make title to the rent or common, but this Writ lieth not of a Common, *4 Ed. 4. fol. 2 Entry 34. 5 Ed. 3. fol. 15 Assise 167.*

An Assise of Corodie without shewing thereof, and *Finchd. fuit inanis*, because the Court would not compell the Plaintiff to make title where it was in grosse, and said they did against the Law, *29 Ass. P. 8. Assise 278.*

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**XL.** *What Title is good in an assise or other action against the Deed of the Ancestor, or a Record.*

**U**Pon a Deed of the Ancestor with warranty to *T.* whose estate the Tenant hath pleaded in Barre, the Plaintiff saith, that the Ancestor died

died seised, *Herle*, the Title seemed good, but it was found against the plaintiff, the deed is confessed, yet he took it by protestation, 9 *Ed.3. f. 17. Assise 155. M.38 Ed.3. Title 30. and 44 Ed.3. Title 31. M. 45 Ed.3. Title 32. 10 H.4. Title 14. 16 Ass. P. 16. Title 9.*

It was said, 10 *Ass. P. 23.* that against a release of the ancestor with warranty, a dying seised of the same ancestor shall not be a Title, but it shall be against his Feoffment with warranty *Title 8.*

Against a release of the ancestor with warranty by collaterall pleading, the plaintiff said, that after the date of the release, one T. was seised in fee, and enfeoffed him, it was held a good Title, *M.28 Hen. 6. Title 19.* the Tenant would have estopped him by this, that in another assise upon the same plea in Bar, the plaintiff made Title by Lease and release, but because the release was denied, each was estopped against the other &c. all at large, *Hill 32 Ed.3. Title 36.*

In an Assise, a Fine of the ancestor pleaded in Bar, the Plaintiff said, that this ancestor had nothing but for life, the reversion to him, and that he entred for forfeiture, and it seemed a good Title, shewing how he hath the reversion. *Caunt.* If he claim it one way, and another Title be proved, he shall recover. *Herle.* If in an Assise one justifie for alienation of the Tenant for life, he shall not shew how he hath the reversion, because it is vested, *H.6. Ed.3. fol. 1. Ass. 198.* But against such Fine of his ancestor, he shall shew the Lease of the other ancestor to him which acknowledged the Fine and the discent to the Plaintiff, who entred &c. 3 *Ed.3. fol. 21. Assise 174.* and needs not shew how the other ancestor had it &c.

Upon a Fine of the ancestor pleaded against an Infant, he said, that the Conusee re-infeoffed the same ancestor who died seised, and because within age, the Assise was at large, but yet the Title shall be entred, 28 *Ass. 401. Assise 26.3.* but to say generally that the ancestor died seised, is no Title against a Fine, without shewing how he had it, 5 *H.7. fol. 29. Ass. 35.* So of an Act of Parliament, 10 *H.7. f. 5. H.10 H.4. Title 14.*

In an assise the Tenant pleaded recovery against a stranger, and Title of the plaintiff mean between the Writ and the Recovery; it is no plea for the plaintiff to say, that he against whom &c. had not any thing, if he say not that himself was seised, or another whose estate he hath, *P.48. Ed.3. fol. Title 33.*

The Tenant saith, that he recovered against the same Plaintiff in an assise, he saith, that T. gave the Lands to B. his father for life, the remainder to the plaintiff, the father died, he entred, and was seised and disseised long time before the recovery, and held a good Title, *P.13 Ed.3. Title 6.*

And in this Case to another parcell, the Defendant pleaded a recovery against a stranger of the Seisin of A. in a *Mortdancefor* and the Title of the Plaintiff mean, and said, that T. gave it to A. for life, the remainder to him &c. so being seised before the *Mortdancefor*, the Tenant said that A. was seised in fee, without that that he had any thing of the gift



of *T.* but it is not sufficient to say only, that *A.* had nothing of the gift of *T.* for where the Plaintiff is compelled to make title, it is sufficient to traverse it.

But where one makes title of his own agreement only, there, upon another title found, he shall recover, and here the title is not materiall, for he might make title; that before the Recovery he was seised, and disseised, without more, and so the Lease to *A.* not traversable, *P. 13. Ed. 3. Title 6.*

Fine pleaded and executed against *T.* and title of the Plaintiff means the Plaintiff makes title after by fine of the Conusee &c. *29 Aff. P. 1. Asfise 275.*

**XLI.** *What Title may be good, where he medleth with the Bar, and whether he medleth with the bar, or make Title at large.*

**I**T is not a sufficient title, that it was found by office, the reversion to him after the death of the Tenant for life, without shewing how he had it in deed, where the Tenant saith, that the reversion was granted to him by *T.* who leased it to *J.* (now dead) for life, *H. 10 Ed. 3. fol. 2. Aff. 156.*

Asfise by a Woman, the Tenant saith, that the Land was given to the Plaintiff and her first husband in special taile, the remainder to the Heirs of the Husband, who died without issue, that she took another Husband who aliened, and the Heir of the first entred, and enfeofed us, the woman said, that her first Husband devised the remainder to her and her Heirs now the Tenant took not advantage of the discontinuance but demurred upon the devise, and this was held a good Title &c. *26 Aff. P. 60. Aff. 259.*

A man shall make title at large in no Action, but in an Asfise, not in Trespass, because of the certainty in the Writ, *scil.* day and year &c. and judgement hath been reversed upon a title at large, made in a Writ of Entry in nature of an Asfise, *5 H. 7. Title 24.* and *M. 21 H. 6. Title 26. the same year, Title 27.* But there he may say, that after the title pleaded in bar, such a one enfeofed him, *34 H. 6. fol. Entry 25.*

An Asfise by *Colt*, the Tenant said that *T.* enfeofed the Father of the Plaintiff, and the Land descended to the Plaintiff, and afterwards it was ordained by Parliament, that all estates made by *T.* or by any other seised to his use to the Father of the Plaintiff, or to any other to his use, should be void, whereupon *T.* entred upon the Plaintiff, and enfeofed us. The Plaintiff said that *J.* was seised, and gave it to the Father and Mother of the Plaintiff in taile, that the Wife survived, and we are their issue &c. and it was held that title at large shall not be made, because the Tenant hath given

given him a title and avoided it by Parliament. So where one gives title by matter in a fact, as that he enfeoffed the Plaintiff upon condition &c. or that his Father within age enfeoffed the Plaintiff &c. so if not of sound memory &c. or where the Father of the Plaintiff disseised the Tenant, and he made continual claim &c. in these cases *Brian* said, that the Plaintiff shall not make title at large. It was also held, if the Tenant plead a fine, recovery, or Feoffment with warranty, the Plaintiff shall not make title at large, for he is bound by them, if he be party, or Heir. *Quare* of the Warranty. But if the Tenant plead that the Plaintiff recovered against him, and he reversed it by Writ of Error, and stayed Execution, the Plaintiff may make title at large, for this recovery is but a colour &c. *Quare*, if this stand with the reason of *Brian*, 5 H. 7. fol.

*Title 25.*

And where a man makes title at large, he shall not traverse the bar, 5 H. 7. fol. 32. and fol. 33.

The Tenant saith, that *J.* enfeoffed him, and afterwards disseised him, and enfeoffed the Plaintiff, the Plaintiff said that *J.* levied a fine to the Plaintiff before, and that he enfeoffed not the Tenant, this is a negative pregnant, but he shall say, that before the feoffment supposed, he acknowledged a fine to the Plaintiff, without that, that he hath any thing of his Feoffment &c. *M. 21. H. 6. Title 27.*

It was said, if a Feoffment of a stranger be pleaded, and colour given, the Plaintiff shall not say that before &c. another was seised, and enfeoffed him &c. until &c. because it might stand but it is sufficient to say that a stranger was seised and infeoffed him, without saying before &c. *Quare*, it seems this is a title at large, 14 H. 6. fol. 6. *Vide* 28 H. 6. *Title 19 Divis. 39.*

And upon release of the Plaintiff pleaded, it is sufficient to say, that afterwards *T.* was seised and enfeoffed him, 9 H. 6. fol. 49.

**X L I I.** *Title, where to be shewen how he had the Estate, or how he by whom he claims had it, and where good by what Estate.*

**A** Feoffment of a stranger pleaded in bar with colour, the Plaintiff saith that he was seised untill he was disseised by the Tenant, without that the stranger enfeoffed him, and held a good Title, *quod nota*, P. 30. H. 6. *Title 15.*

The Tenant pleaded that *W. P.* leased to the Father of the Plaintiff, the remainder to his Father in fee, and both are dead, and gives colour, the Plaintiff saith that *W.* before the supposed Lease was seised and enfeoffed him, and was so he was seised until &c. held a good title, 9 H. 4. *Title 95.*

*Assise*



Assise of Rent in gross, the Plaintiff may not make title by a *Que* estate by prescription, otherwise it is, if he claim as parcell of a Mannor, 31 *Aff. P. 23. Title 13.*

So of Rent-service, seisin is a sufficient title without Deed after the purchase. Otherwise it is of a Rent-seck or Rent-charge, although that he and all the Lords of the Mannor have been seised &c. if he claim it not as parcel of the Mannor, 22 *Aff. pla. 52. Aff. 244.* Upon a Recovery pleaded, the Plaintiff may well say, that he against whom &c. had not any thing, but *T.* whose Estate he hath, and good without shewing how, 48 *Ed. 4. fol. Title 33.*

It is said that the Plaintiff by way of title in his replication shall never plead by a *Que* Estate, 2 *Ed. 4. fol. 27. per Danby 9 Ed. 4. fol. 3.*

**X L I I I.** *The forme of Title to a Rent, Common, Office, and Corody.*

**V**Pon *Hors de son fee* pleaded, the Plaintiff may well say that his Grandfather died seised, and the Land descended to his Father, who died seised, and it descended unto him, and shall have the assise without shewing any specialty, 8 *Ed. 2. Aff. 420. Vide Divis. 41.* a good case. An Abbot shall make title to Rent by prescription, 19 *Ed. 3. Title 34. 18 Aff. P. 17. Title 10.* And title by a *Que* Estate by Deed is good &c. & vide 29 *Aff. P. 66. Title 12.* where in an assise of Rent upon the Deed of the Ancestor pleaded, the Plaintiff said, that his Ancestor died seised, without shewing how, and it was good as well as of Land &c.

A man made title to Rent by Deed, by which the Grantor bound himselfe to pay it &c. 29 *Ed. 3. Aff. 366.*

The Tenant said, that he granted the Rent to the Plaintiff for the term of the life of *T.* who is dead, the Plaintiff said that the Tenant held the Land of him, and he was seised untill disseised, and it was good without alledging any speciall disseisin, 36 *H. 6. fol. Title 22. Vide the accord with 9 Ed. 4. fol. 19. Aff. 30.*

The Plaintiff made his title, that *T.* was seised of the Land whereof &c. and granted him the Rent, and did not shew the quantity of the Land, but the Deed would have it, *de omnibus terris in villa*, and it was part of his plea, whereby the title was good, *H. 8. H. 4. fol. Title 28. 7 H. 4. fol. 29.*

An Assise of Rent, the Tenant saith, that the Plaintiff enfeoffed him, to hold of the chiefe Lord, the Plaintiff saith, that after &c. he was seised by the hand of the Tenant, this is no title without saying how &c. 8 *Ed. 3. Aff. 419.* See there, he alledged how he was disseised of the Rent, as by replevin, sued, and agreeth with 11 *H. 7. fol. 28.* where it is said, that he ought in the title to shew what rent it is, and how the disseisee made it &c.

In an assise of an Office, and made title by resignation of *T.* and that he was admitted by the Chief Justice, and it was held, a Resignation is of a Benefice to the Bishop, but of an Office it shall surrender; but the better title is to say, that the Office was void, and he was admitted, *M.8.Ed.3.*

*fol. Title 23.*

An Assise of Corody, where he shall not make title by the Grant of the King without Deed, *4 Ed. 3. Ass. 177. Vide the Case Divis. 16.*

**XLIV.** *What Title shall be when the parties agree of one and the same person, and what when the Tenant gives colour of Title to the Plaintiff.*

**I**N an assise the Tenant pleaded the Feoffment of a Stranger, and gives colour, the Plaintiff to part saith, that another stranger enfeoffed him, and to the residue saith, that one *T.* acknowledged a fine of release to the Plaintiff &c. and the last was held no title, because he alledged not seisin in *T.* as if the Plaintiff said that one brought a *Præcipe* against him, and he barred him, this is no title. So he said, that he himselfe was seised, and that a stranger released unto him &c. But a fine of his gift is a good title, *13 H.6. Title 21. M.10 H.6. fol.21.*

The Tenant pleaded, that *W.* leased to the Father of the Plaintiff for life, the remainder to his Father in fee, and both died, and gave colour, the Plaintiff said, that *W.* before this Lease supposed, was seised, and enfeoffed him, so he was seised until &c. and held a good title without more, *9 H.4 Title 29. Divis. 41.*

But where the Tenant said that *T.* enfeoffed him, and afterwards disfeised him, and enfeoffed the Plaintiff, and the Plaintiff pleaded the gift of *T.* to him before &c. without that that the Tenant hath any thing of the feoffment of *T.* *Quære;* if this traverse be needfull &c. *M. 21 H. 6. Title 27.*

In an assise the Tenant saith that *J.* died seised, and his heir infeoffed him, the Plaintiff saith that *J.* was his Villain, and he entred before the feoffment &c. *M.26 H.6. Title 17.*

The Tenant said that his Ancestor was seised, and did Lease to *T.* for life, who aliened, and the Plaintiff claimed as Heir, where he was a bastard entred, and we outed him as Heir &c. the Plaintiff said, that he recovered in an assise against *T.* and his alienee, at which time the Tenant had nothing, nor ever had, and so was seised &c. and held no title to have an assise *10 Ass. P. 20. Title 7.*



X L V. *Where in Assise where there is no need to make Title, besides his own possession, and where it is needfull.*

**V**Pon a Feoffment of a stranger pleaded in Barre, the plaintiff said that he was seised, untill he was by the Tenant disseised; without that the stranger enfeofed him. *Paſton* held this a good Title, 30 H. 6. Title is. But 26 H. 6. Title 18. to alledge his own Title with traverse to the Barre was held no sufficient Title in an Assise, nor in a Writ of Entry, but good in Trespasse &c.

But see that upon a recovery against a stranger pleaded and the Title of the plaintiff shewed, it sufficeth to alledge the Seisin in himself at the time without that that the stranger had any thing, 48 Ed. 3. Title 33. and upon release of all Actions pleaded, the Plaintiff said, that after it he was seised and disseised, and held a good Title, because this Release did not extinguish the right, P. 19 Ed. 3. Title 35. and upon a recovery pleaded against a stranger in a *mort. d'ancestor*, and the Title of the plaintiff shewed it was holden a good Title, to say that before &c. he himself was seised untill &c. 13 Ed. 3. Title 6. See of this *Divis.* 39.

In an Assise the Tenant said, that the Plaintiff brought *Termin. qui prateriit* against him of the same Land, Judgement &c. the Plaintiff said, that this Land is not part of the Land then put in view, whereupon Assise was awarded, but if the Tenant had rejoined, that part was in view, proceſſe should have been made against the first viewers, otherwise if he had said, parcell in demand, and it was moved, whether it was a Title for the Plaintiff, to say that after &c. that he was seised, untill he was disseised, and if he shewed that he was seised before the Writ and disseised, and that after the Writ he entred &c. upon this Title he shall have an assise, although that the other Writ be depending, *Quare* of this 29 Assise. P. 66. Title 11.

Upon a Deed of the ancestor pleaded against two, whereof the one was within age, both made Title by discent from the same ancestor, and it was well, but if another Title be found for the Infant, they shall recover, 29 Ass. P. 53. Assise 289.

Where a release of a stranger in his possession, is no Title, 16 Hen. fol. 22. *Divis.* 43. A.

X L V I. *Where*

**XLVI.** *Where upon a naughty Bar pleaded, and a good Title, a naughty replication shall not prejudice, if the Title and disseisin proved.*

**T**He one Tenant pleads a Bar, the other that no Tenant is named, the Plaintiff makes Title which is good, now although the Bar be naughty, and the explication to the Title naughty, and the Seisin and disseisin found, the plaintiff shall recover, 36 H. 6. fol. 35. *Aff. 19.*

If the Tenant plead a naughty Bar, and confesse the oustre, the Plaintiff makes a good Title, and this being found, he shall recover without inquiry of the Seisin and disseisin, so when a good Bar is pleaded, and the Tenant saith, that the Assise cometh upon the Title, and found for the plaintiff &c. for where a naughty Bar is pleaded the plaintiff may make Title at large, and pray the assise 6 H. 7. fol. 2. *Assise 36. 14 H. 7. fol. 12.* and otherwise it is in *Pracipe*.

Likewise upon a naughty Bar pleaded, the plaintiff may have the Assise at large without making Title, but if he make Title, which likewise is not sufficient, and Seisin and disseisin be found, he shall not have Judgement, *Quere*, for some say that he shall have it upon the seisin and disseisin found, but not upon a naughty Title found for him, T. 11. H. 7. fol. 28.

**XLVII.** *Where one may plead a Bar without the other, and where he may plead for himself and another, and where the one may not plead in Bar, and the other to the Writ, and a Bar against the one plaintiff, and to the Assise against the other.*

**A**ssise against husband and wife, who plead a Bar by Attorney, at another time the husband in proper person pleads a release, and it seems he shall not be received, if the Attorney of the wife will not assent &c. 26 Book of *Assise P. 44. Assise 243.*

Assise against Husband and wife, he saith that the wife is eloined and within age, and pleads for himself and his wife as guardian. Thorp said, that he ought to have a warrant, &c. and the assise awarded, 29 *Aff. P. 67. Assise 293.*

Assise by husband and wife, she may not disavow the suit, and if she be eloined by the Tenant, or if the wife of the tenant be eloined by the plaintiff he shall shew it, and plead for him like, and his wife, but he shall be like that of her husband, 39 *Aff. P. 1. Assise 333.* Upon profession pleaded in the Wife, and certified, the Judgement shall not be, that they shall be barred for ever, P. 21. R. 2. *Aff. 334.*



Assise against two, the one saith, that the Plaintiff was seised, and was ousted of the Plea, because the other as tenant had pleaded to the assise, 26 *Ass. P.* 49. *Ass.* 244.

Assise by two Parceners, the one within age, the Tenant claimed by partition as the 3. and pleaded the partition in bar against her of full age, and to the assise against the Infant, and it was holden that he must plead in bar against them both, or she may waive the bar against the other *per Curiam*, yet the assise shall be inquired at large for the Infant, 30 *Ass. P.* 7.

Assise against two severall tenants, the one pleads a Deed of the Ancestor of the Infant, which comprehendeth all the Land, but he would not that the other tenant should take advantage of the Deed, and the other pleads the same Deed to T. whose Estate he hath, and well without shewing it, because it belonged to the other tenant party, 40 *Ass. P.* 34. *Ass.* 342.

#### XL VIII. Of what things the assise shall first inquire, and where of many points.

**A**ssise against 7. and others, the others to part plead joyntenancy, and to the rest as Tenants plead in bar. 7. likewise accepts the tenancy, and pleads in bar by a Deed of the Ancestor of the Plaintiff, the Plaintiff chooseth 7. his tenant, and intitles him by entry for condition, and at issue, and found that the others were Tenants of that part whereof joyntenancy was pleaded, and of the residue, the condition found against the Plaintiff, and was held error, because the issue was inquired before the tenant. So when one pleads no tenant named, and if &c. *mul. tort.* it shall be error to inquire of the seisin and disseisin before the tenant be found, *P. II. H. 4. f. 68. Assise* 48. 35 *Ass. P.* 2. 12 *H. 6. f. 1.*

And in an assise adjourned for the difficulty of the Verdict, because they inquired of the issue before the Tenant was found, where the tenancy was severally taken upon them, the assise was remanded to inquire thereof, and seisin and disseisin, 35 *Ass. P.* 2. *Ass.* 3. 9.

*Vide* 13 *Ed. 3. Ass.* 60. where one Defendant made title by the dying seised of the Ancestor, and the other said, that she was tenant in Dower of the endowment of the same Ancestor, and of the assignment of the other tenant; now the assise shall first enquire of the seisin and disseisin, and lastly of the plea of the tenant in Dower &c. So where the one as tenant pleads that the Land is in another town, and the other claims as tenant in Dower &c. the plea of the wife shall not be inquired, until the disseisin be also found for the Plaintiff, 22 *Ass. P.* 12. *Ass.* 199.

Assise of Rent against two, the one pleads, that he was never seised, the other *hors de son fee*, the Plaintiff shewed the Deed of him who pleaded

*Writ de son fee*, the Deed shall be first inquired &c. 18 *Ass. P.* 17. *Assise* 213. and it is said, that alwayes justification by title shall be inquired before the plea, which doth but excuse him of the wrong &c. *M.* 31 *Ed.* 3. *Recap.* c. 5.

**XLIX.** *Where the Assise shall be remanded after adjournment, and when and how it shall be remanded.*

**A**ssise may be remanded upon adjournment, where it was not fully inquired of before, *Divis.* 47. B.

Assise adjourned upon forraign release pleaded and denied, and upon default of the tenant at the *Venire facias* returned by the Sheriff, the assise was remanded, 39 *Ed.* 3. fol. 10. *Ass.* 51. P. 11 *Ri.* 2. *Assise* 72.

So where it is adjourned to adjudge if the Lessor have fee upon the matter shewed, and it being adjudged that he had not the fee, he shall not have generall averment afterwards that he hath the fee, but the Assise shall be remanded, 44 *Ed.* 3. fol. 10. *Assise* 56.

*Finex* saith, in an assise adjourned for difficulty the Justices may hold plea untill the taking of the assise, and may award it upon seisin and disseisin, and then remand it in the Countrey to try the issue taken in the Bench, but upon adjournment for difficulty, they may not give judgement upon the Verdict which was difficult, without remanding, because the trial is past before &c. *Tr.* 16 *H.* 7. fol. 12.

Assise in *Co.* a fine of the Ancestor, the Plaintiff was shewed of the same Tenements in *Cl.* Judgement of the Writ, and adjourned, and the Writ adjudged good. *Shard.* when the Assise is sent thither for the difficulty of the plea, and if this adjudged no bar, the assise shall be awarded and remanded to be taken. *Cant.* But when the plea is to the Writ, and there is no Plaintiff, we will do nothing but adjudge the Writ good, and then he is at large to plead here in bar if he will, or to the assise, 6 *Ed.* 3. fol. 1. *Assise* 168.

**L.** *What Bar shall be good in Assise of Land.*

**T**O say that he entred for the alienation of his tenant for life, and the Estate of the Plaintiff mean between the alienation and the entry, is no bar, because yet the Tenant may be in by discent, and all true. But that he entred for condition broken, and the Estate of the Plaintiff mean, it is good, where he shall recover against a stranger &c. But a fine levied, and the Estate of the Plaintiff mean between the entry, and the execution is no bar, *Concess.* 21 *H.* 6. fol. 17. *agreeth of a fine recovered*, 8 *Ass. P.* 1.



and it held a good bar, *per Curiam*, 29 *Ass. P. T. Ass.* 173. *Vide* 33 *Ass. P.* 24 and 43 *Ass. P.* 45. the diversity between the entry upon forfeiture, and for condition broken.

If one Defendant take upon him the tenancy, and plead in bar, he may not say, that the others have nothing, unless that some other take upon him the tenancy also, 8 *H. 4. fol. 7. Ass.* 43.

In assise, the tenant said that his Father died seised, and that he as son &c. and the Plaintiff claimed &c. entred, upon whom *J. S.* entred, upon whom he re-entred. *Skene*, this amounts but that he disseised him not. *Hulls*, he hath said enough. *Tirwhit*, it is nothing, *qd. nota*, 9 *H. 4. fol. 4. Ass.* 44.

But if the Tenant saith that *J.* died seised, and *N.* his Heir in ward to *T.* who granted unto him, and that *N.* yet within age abated upon him, upon whom the Plaintiff entred, and he re-entred, this is a good bar, *P. 21 Ass. P.* 27. *Ass.* 221. *Vide*, 5 *H. 7. fol. 11. infra G.*

Assise the Tenant pleaded the Feoffment of the Plaintiff with warranty to one named in the Writ, whose Estate he had; this is a good bar, *P. 43. Ed. 3. Ass.* 54. but no bar if it be without warranty, 29 *Ass. P.* 24. 10 *H. 7. fol. 14. 11 H. 7. fol. 21.*

In an assise the Tenant said that *T.* leased to the Ancestor of the Plaintiff, who surrendered unto him, whose Estate the Tenant hath. This is said by him is but to the assise, but said by *T.* is had been a bar, 11 *Ass. P. 1. Bar* 59. 19 *H. 6. fol. 21.*

Jointenants by feoffment at the time of the Writ, no plea, *P. 18 Ed. 3. Ass.* 77. And see there that execution against tenant in taile upon a Statute acknowledged by his Father is a disseisin.

An Assise by a Woman against a Woman, she said, that *W.* did grant, and render the Land to her and *P.* her Husband in taile &c. the Assise taken said, that the Plaintiff and *H.* her Husband were jointly seised in Fee, and leased in *W.* and his Heirs for 16. years (saving the reversion of three parts) and that after the term the fourth part should remain to *J. W.* and their heirs, *J. W.* died without Issue, *J.* his Heir entred, and died without issue within the term, whereby *P.* his Brother and Heir entred, and this *W.* acknowledged a fine to her Husband, the tenant and her, whereas *W.* never had title nor possession, *P.* the Husband died, the Tenant held himselfe in, and it was said, that the taking of a fine, and so claim the fee is not now a disseisin, because the Tenant was covert at the time, and the Husband was dead, and the entry of the Heir upon the Lessee for years to him and his heirs during the term is not lawfull, and it is to be accounted no disseisin afterwards, until the tenant after the term ended deny the Heir entry &c. *M. 11. Ed. 3. Ass.* 88.

Where the recovery is against many, the Plaintiff recovers, and makes execution by *Elegit* for damages, and hath the land of *D.* delivered for the Land of *C. D.* shall have an assise, and the recovery shall not be a bar, for as to this, *D.* is not privy to the Judgment, *M. 13 Ed. 3. Ass.* 97.

An exchange between the Ancestor of the Plaintiff and the Tenant, it is a good plea in bar, *M.7 Ed.3. fol. 72. Assise 139.*

A fine of the Ancestor of the Plaintiff to the Tenant for life pleaded in bar, was said to be no plea without warranty and relying upon it. *Quare*, But it seems a good plea, if he pleads over, and the Plaintiff supposing a forfeiture by alienation entred. Judgement if upon such abatement &c. and the Plaintiff averred that he was seised &c. and not by abatement, and upon that at issue, although the action is of his possession, and the bar by the Deed of the Ancestor, *8 Ed.3. fol. 53. Ass. 148.* But fine of the Ancestor of *T* who rendred to him for life, and the reversion to the tenant, is a good bar by the conuſance, without the word of grant, *9 Ed. 3. fol. 5. Assise 152. 6 Ed.3. Assise 168. 3 Ed.3. fol. 21. Assise 174.* and a fine *Sur Conuſans de droit*, or recovery against the Ancestor is a good bar. So a fine upon release, or upon a grant and render, *8 H.4. fol. 7. Averment 18.* And a Deed of the Ancestor with warranty is good without question, *13 Ed.3. Bar 254.* But this shall be pleaded in bar, and not as an Estoppel. But it was there holden, that the feoffment of the Ancestor, of whose seisin he demands, is but to the assise in a *Mortdancestor*, nor in waste of his own Lease, otherwise it is against tenant in Dower, *20 H. 6. fol. 21. 28. 11 H.4. fol. 3.*

Feoffment with warranty being pleaded by way of replication in Trespass, he relied upon the whole matter, *14 H.4. fol. 13.* and in a bar, *21 Ed.4. fol 99.*

He which pleaded the feoffment of the Ancestor to *T*. whose estate &c. saies further, that *T*. suffered the Ancestor to occupy at will &c. and this is colour *11 H. 4. fol. 3. 19 H. 6. fol. 21.* But there he pleaded the Lease of the Ancestor to *T*. and relinquished, *Que estate &c.* without such colour.

Assise by a Warden of an Hospital against the Arch-Bishop and *P*. the Arch Bishop said *nul. tort.* *P*. said that the Arch-Bishop for some cause hath deprived the Plaintiff, and made him Warden, and alledged not the cause, the Plaintiff alledged that the King made him Warden for life, and that it is a lay fee, and payeth tithes to the Parson; & the Charter agreeth, and that the King had it by the temporalities of the Arch-Bishop being void, so the Arch-Bishop Patron, and although that he said, that he deprived him as Ordinary, yet if he did it as Patron, the Plaintiff is barred. It is also a thing spirituall, and so under the Ordinary &c. *M.8. Ed.3. fol. 69. Ass. 150. Vide*, it was at the visitation which he made as Patron being a lay fee &c.

Assise upon a Deed of the Grandfather with warranty pleaded, the tenant said that the same Grandfather died seised, and good; but if this be found against him, it seems he may not deny the Deed afterwards. *Tremaine*, if it be found for the Plaintiff in another action, he may deny the Deed. *Herle*, by his Plea the Deed is not denied, and would have awarded the Assise, and the other traversed the dying seised. And see the



the Plaintiff was not put to answer to the deed of another Seisin, but that is not denied by the Plea of dying seised &c. 9 Ed. 3. fol. 17. *Assise* 155.

It was found, that the tenant of the King died also seised of other Land, which indeed he had not but for life, the whole seised, and after his estate found, the Reversion to *l.* who now brought the assise, and *ouster le main* granted, yet he must aver his title, and shew how it came &c. and then the Entry lawfull upon the *ouster le main* granted in Chancery, and it shall give sufficient Seisin to have an assise, 10 Ed. 3. fol. 2. *Ass.* 156. and no aid from the King in assise by alledging the Land was seised in his hands, without averring that it is now in his hands, 26 *Ass. P.* 10. *Ass.* 136.

It is a good plea in Bar, that the ancestor of the Plaintiff acknowledged in a release by Fine to *T.* that he rendred it for life, the remainder to the tenant &c. 8 H. 4. fol. 7. 3 Ed. 3. fol. 21. 6 Ed. 3. fol. 1.

A Release of the Plaintiff to *T.* whose estate he hath, is a good Bar, 8 *Ass. P.* 15. *Ass.* 190. 43 Ed. 3. *Assise* 54. and a release to the Tenant a good Bar, 32 H. 6. fol. 1.

Tenant claims nothing but in Dower, 38 *Ass. P.* 26.

The father held as guardian, and aliened in fee, 8 *Ass. P.* 15. *Ass.* 207. *Divis.* 8. B.

A good Bar, that the plaintiff aliened this parcel by the name of Manor, whereas it was severed before, 18 *Ass. P.* 2. *Ass.* 212.

Bar, that the plaintiff had execution of a Statute against the tenant, and granted him at a certain time, and after did covenant that if he payed 20 l. that he should retain it for ever, and that he paid him, and shewed an acquittance *in parte solutionis* of 20 l. and good with averment, that it was the same debt &c. 20 *Ass. P.* 7. *Assise* 216.

A recovery against the plaintiff that he had nothing of the time &c. is no Bar, 26 *Ass. P.* 6. *Ass.* 253. but it is not but to the Assise, if he alledged not this before &c. 28 *Ass. P.* 14.

That the Plaintiff himself is seised, is to the Assise not in Bar, 27 *Ass. P.* 30. *Ass.* 253.

Bar by Entry for alienation of the Tenant after possibility, 27 *Ass. P.* 50. *Ass.* 259.

Recovery against the Ancestor a good Bar, notwithstanding the dying seised of the same Ancestor before Judgement, or depending the Writ (but then Error) 28 *Ass. P.* 17. *Ass.* 267.

In assise the Tenant saith, that *A.* recovered in assise against him, and that he reversed it by Error, and the estate of the Plaintiff mean between the recovery and the reversall, it is not error if he shew not that *A.* was tenant at the time of the error sued forth, for otherwise he may not enter upon the plaintiff without a *scire facias*, and the assise awarded for the damages, for not alledging it, 28 *Ass. P.* 21. *Ass.* 268.

Bar by Lease, by Indenture to the ancestor of the plaintiff for life, and where he may say, that nothing passeth &c. 28 *Ass. P.* 22. *Ass.* 269. Bar

Bar in affise by this, that the plaintiff disseised *B. D.* entred to the use of *E.* the son of *B.* who saith that he vouchsafed it, and it was good without deed, 29 *Aff. P. 12. Affise 280 & 30 Book of affise, P. 11.*

Bar by Partition made between the Plaintiff and the Tenant &c. 30 *Aff. P. 7. Aff. 298. Divis. 9. G.*

But by partition with a stranger who had no colour to be heire, or with a disseisor, although he had colour, or with a feme Covert, it is void, 11 *Ed. 3. Bar 151.*

Bar, that the father was seised, and the Lord granted unto him the wardship, 31 *Aff. P. 26.*

Bar, that the Plaintiff hath execution of a Statute against us, and *T.* against him, whose estate &c. 38 *Aff. P. 4.*

In affise the tenant saith that her husband died seised, and the Plaintiff assigned her dower holden in Bar and not to the affise, because she is in by the husband, but a Lease of the Plaintiff shall be to the affise &c. 38 *Aff. P. 26. Aff. 332.*

But vide 6 *H. 7. fol. 14. and 18 Ed. 4. fol. 14.* that a Lease of the plaintiff is a good Bar, but by them a feoffment of the plaintiff is not, but to the affise.

It is a good Bar, that *R.* the mother of the Plaintiff was seised, and took to husband *T.* had issue, and *R.* died seised, *T.* in by the courtesie did Lease to the Tenant, and is yet alive; and good, because he acknowledged the Reversion to the Plaintiff &c. 27 *Aff. P. 31. Bar 303.*

It is not a Bar against an Infant to say that his Ancestor acknowledged to hold of him in Knights service by Indenture, &c. 39 *Aff. P. 3. Affise 334.*

In an affise, the Tenant pleaded that he brought his *Cui in vita* against the plaintiff, and after the Affise brought the Plaintiff vouched there, so admitted himself Tenant, the plaintiff ousted him of this plea by choosing another Tenant, who is named, and the affise awarded upon it, 43 *Aff. P. 7. Affise 350.*

The Tenant alledged that he had execution of a Statute made by *T.* against the Plaintiff as feoffee, and the Plaintiff sued a re-extent, supposing the extent to be of a lesse value, and found against him &c. now the plaintiff may not say that the Tenant delivered the estate before to *T.* in lieu of acquittance, because he had sued a re-extent, and also he is put to an *Andita quarela* &c. 43 *Book of Affise. P. 7. Affise 351.*

In Affise the Tenant said, that he assigned Dower to the Plaintiff, and that the Plaintiff by Deed confirmed to the Tennant who was then in reversion to hold during her life, and it was holden that all took effect by the deed without livery, *Quere*, but if so by Lease, Release or Surrender, 44 *Aff. P. 3. Aff. 355.*

A Fine pleaded against an Infant, shall put him to answer, 8 *Ed. 2. Affise 414.*

Affise brought by many against many, a Release of Actions personall, by



by one of the plaintiffs, is a Bar for him onely, as the non suit of one in a *Quare impedit*. So in ward of the body, the release of the one shall not hurt the other, but gives him advantage to have the whole, *M.30. Hen. 6. Barr 59.*

Asfise against two, the one makes default, the other pleads a deed of the ancestor with Warranty of the whole, yet it shall be a Bar but for the moyety, if he claim no more, *13 Ed.3. Bar 254.*

In an asfise the Tenant pleads in Bar, that *7.* was seised untill he was disseised by *D.* who enfeoffed the plaintiff, whereupon *7.* reentred, and enfeoffed us, a good Bar in asfise, not in Trespasse, because it is not an immediate entry, *5 H.7.fol.11. vide supra B.9 H.4.*

And note, that no Bar is good in an asfise, unlesse he which pleads it takes upon him the Tenancy, *20 H.6.fol.38.19 Ed.3.Title 35.*



## Avowry.

1. *What Person may plead rien arere, or levied by Distresse, and where it may be pleaded.*

*Vide C. 9. part in the Case of Avowry acc. 1.*

*4 b 4.317 E.3*

*Vide C. 9. part in Bucknells case, acc.*

*Ne unq. seif. of the services generally is no good Plea, but ne unq. seife of part of the services is a good plea.*

*Note, it was r solved H.17. in Co.1.B. in Laiton and Granger case, that now by the Statute of 21 b.8, cap.19. a stranger may plead any Plea in Bar of quod sit by the Equity of the said Statute.*

**A** Stranger to an avowry shall not have this Plea, and because that he in Reversion joyns in aid, and the Avowry is made upon him, the Termor shall not plead, nothing behind, if he in Reversion will not, in like manner he shall not plead Dower, seised of the Services, *2 H. 6. fol.2,3. Avowry 1. 22 Hen.6.fol.3. Avowry 14.*

But a stranger may plead *hors de son fee*, or any thing *tant amount*, not *rien arere*, nor *levie per distresse*; a Seignior, and are in the right *34 Ed. 3. Avowry 257. 3. Ed. 4. Avowry 186.*

But the Feoffee may plead *rien arere*, if the Lord avow upon him, or that he was never seised by the hands of the Feoffor &c. *18 Ed. 2. Avowry 217.*

**II.** *What persons may plead tender of services or Rent, and who not, and how they shall be pleaded, and who may plead, that be upon whom the Avowry &c. puts his beasts in the Land taken for distresse.*

**T**ermor or Bailiff may plead a tender, but the tender of a stranger shall not make a privity, but good for payment where there was a privity before, 2 H. 6. fol. 4. *Avowry* 1. 1 H. 7. fol. 27 So a Termor or Bailiff may not attorn upon the Grant of the Lord, 39 H. 6. fol. 3. 41 Ed. 3. f. 26. Tender by a servant is good of rent or on an obligation, 2 H. 6. fol. 3. *Quare* of the tender of a disseisor or Tenant of *pearavails*, of services due, for seisin of them by their hands is sufficient, 8 H. fol. 18, 19. Vide C. 9 part. 22 acc. 32 b. 6. 23.

And there it is said, if the Lord come &c. and the Tenant tender him part of one Term he may refuse it, and distrein for all, but if the Rent be two terms arrear, and he tender the whole of one Term, the Lord may not distrein for that, but for the other he may, and the tender shall be upon the Land, and at the time of the distresse taken, 2 H. 6. fol. 3. *Avowry* 1. 39 H. 6. Bar 79. So if the Lord distrein for an amerciamment in the Leet, 45 Ed. 3. fol. 9 *Avowry* 80. 2 b. 6. by Soties: more.

And the Tenant ought to take notice at his peril, for what thing the Lord distreineth, and tender any summe if he hath not notice, as 2 d. &c. with this, that he is ready &c. if more be due &c. then the Lord shall not distrein without saying for what &c. 45 Ed. 3. fol. 9. 20 b. 6. 31. b. acc.

And it was said there, that if the Lord hath taken a Distresse, and the Tenant make tender before he lead it away, and the Lord refuse, that this is a wrongfull distresse by some 45 Ed. 3. 9. Vide C. 8. part: b. 6. Carpenters case.

The Feoffee being a stranger to the Avowry, may plead that to the fealty, he tendred it to L. before the taking, and hath been at all times since ready to do it, and as to the residue traverse the Seisin, 31 Ed. 3. *Avowry* 111. &c. 30 Aff. 30. 13 b. 4. 17. acc.

But tender of Homage out of the Land is good, and taking a Distresse without new Demand is tortious, 21 Ed. 3. *Avowry* 116. The same Law is of fealty, 21 Ed. 4. fol. *Avowry* 42.

If the Lord distrein after tender, the Tenant in his replication need not say *uncore prist*. because the distresse was tortious, 4 Ed. 3. fol. *Avowry* 166

If the Rent of my tenant be arrear three years, and he tender that of the first year, I need not receive it, if he do not tender me damages also, so of the second, but of the last year he need not, and it is said, that although he tender the rent of the last year, yet I may distrein for the first, and an acquittance for the Receipt of an annuity of the last year, it was no Bar but onely for that year, 39 H. 6. fol. Bar 79.

In a *cessavit*, he ought to tender all the arrears, for the Lord shall not avow for any service due before the Cessation, nor pending the Writ, and there



there he tendred 6 d. for two suit dayes of Court, 17 Ed. 3. *Cessavit* 19.

It was agreed, that he which hath made an Acquittance of the last Term, shall not avow for any Rent due before, 11 H. 4. fol. *Avowry* 55. *Contra* 39 H. 6.

A stranger may say, that he upon whom the Avowry &c. puts in his Beasts ready to a distress, or he himselfe tendred the Rent before the distress &c. *per Newton*, 22 H. 6. fol. 3. *Avowry* 14. And note, that the Lord may refuse this time, and distrain at another time, so that the tenant ought to be ready at every day, but for homage after tender, he shall not distrain without a new request, 20 H. 6. fol. 33. So for fealty, 21 Ed. 4. fol. *Avowry* 42.

A Feoffee shall not compell the Lord to avow upon him, without tendering the whole Rent and Arrearages, 20 Ed. 3. *Avowry* 125. and this before the feoffment and after, 7 H. 4. fol. 14. 4 Ed. 3. *Avowry* 166.

One joyntenant may tender for his companion as a Bailiff for his Master, 1 H. 7. fol. 27. 39 H. 6. fol. 3. Not so after he hath lost by default in a *Cessavit* 40 Ed. 3. fol. 40. and of a Bayliff, *Vide* 16 Ed. 3. *Avowry* 90.

A Feoffee cannot tender the homage nor fealty of the Feoffor, where not corporeall, but Rent and Harriot he may, 7 Ed. 4. fol. 26.

### III. What person may plead Unques seisi of services generally, or Unques seisi after limitation, how and when shall be pleaded, and where the seisin or tenure may be traversed.

A Stranger to an Avowry may not plead, Never seised of the Services, nor may traverse the Seisin of the Lord, 2 H. 6. f. 3. and 4. *Avowry* 1. But the tenant himselfe may, that he holds of another, without that that the avowant was ever seised after limitation of a life, 10 H. 6. f. *Avowry* 9. 30 H. 6. fol. 6. *Avowry* 15. 16 Ed. 4. fol. 12.

C. 9. part.  
Bucknells case,  
acc.

*Ne unques seisi* of all his services generally, is no plea, but he ought to traverse the tenure, but good of some parcel where he confesseth a tenure, 16 Ed. 4. fol. 12. So *ne unques seisi* by his hand against the Grant of the Seignory before attornment, 9 Ed. 2. *monstrants* 41. 12 Ed. 3. *Avowry* 104.

*Unques seisi* after limitation of a life is good, 22 H. 6. fol. 3. But there he ought to confess the tenure, 15 Ed. 2. *Avowry* 214. So alwayes when one will traverse part, 18 Ed. 3. *Avowry* 97. But he which confesseth seisin of Escuage, although it be by wrong, shall never traverse the seisin of the homage, 21 Ed. 3. *Avowry* 115.

And there it is said, that 7. may not traverse a Seisin, but onely of that for which he avoweth, as if it be said that 7. hold by fealey and rent, and avow for Rent, I may traverse the seisin for it alone; *Contra* 16 Ed. 4. f. 12. *It was adjudged* 26. Eliz. in the common Pleas, and taken for a rule, that 33 H. 6. Cess. 1. and there he took seisin of the rest by Protestation, 2 Ed. 3. fol. 100. *Avowry* 169. and 18 Ed. 3. *Avowry* 72. So he that traverseleth seisin ought to confess the tenure, for if there be no tenure, he ought to plead *Hors de son fee*, if a stranger, and if privy to disclaim &c. But see, that where the Lord avoweth upon the Feoffee and alledgeth seisin by the hands of the Feoffor, he may traverse the seisin be the hands of him upon whom &c. generally, 19 Ed. 2. *Avowry* 122. and 124. 20 Ed. 4. fol. 17. 10 H. 6. fol. 7. *where the parties agree in the tenure, there the seisin is traversable, where they do not agree in the Tenure, there the Tenure is traversable.*

Seisin of Services is not traversable in right of a Ward, nor in Customs and services, 31 Ed. 3. *Wards* 116. nor in rescous, nor in *Cessavit*. But there if he demand more services then he ought, the tenant shall confess the rest, and may traverse the seisin or tenure as to them. *Quere.* *C.9 pr. Bucknells case, 17 Car. in Co. B. Westroes case adjudged acc.*

Avowry for 2 s. Rent in 16 Acres of Land, the Plaintiff may say, that he holds these 16 Acres, and other 16 Acres by 2 s. rent, without that that he holdeth these 16 Acres only, & so traverse the tenure, because they agree not in the quantity of the Land, 20 H. 6. fol. 22. *Avowry* 13. But if he hold also by a less service, he may say, *ut supra*, without that that he holds, *modo & forma* &c. 13 H. 7. fol. 26. Or without that he holdeth the 16 Acres onely, and by the services supposed, by *Bryan* for the mischief, although double *M. 8 H. 7 f. 5. 8 Ed. 4. f. 20. &c.*

A stranger shall not plead in abatement of Avowry, without conveying by whose Estate, but if the Lord avow upon the one Parcener, the other may abate for it, and so may her feoffee; but if there be two Parceners Tenants in taile, the one makes a feoffment, and the Lord may avow upon the other, and she not abate this Avowry, 18 Ed. 3. *Avowry* 98.

*Vide*, it is said, that seisin of Escuage is not traversable, because it is never due, but when it is granted by Parliament, 13 H. 4. f. 6.

IV. Where one may make severall Avowries of one entire thing, taken at one time, and where two Persons may make severall Avowries for one thing, taken at one time, and where not.

**H**ales saith, if I avow the taking of three horses for Rent of three years entirely, if part be arrear, I shall have return of all, so impertinent that the Plaintiff shall have any damages, but if he hath made an Avowry of the one, for one term &c. the return should be accordingly, and then the Plaintiff should have damages of the Residue &c. In like manner if the



Lord take one horse, and make severall Avowries, as for Rent-service, and Rent-charge granted by the Plaintiff, and the one is found for him; and the other against him, he shall return, and the other shall have damages 2 H.6. fol.3. and 4. *Avowry* 1. But the Law seems otherwise in the former case, 5 H.7. f. 23.44 Ed 4. f. 13. *Vide Return of beasts* 11.

Replevin against two, the one avowes for the taking of one Oxe, and the other of the other, and good, and the demandant compelled to answer to the avowry severally, 16 Ed 3. *Avowry* 97 94. But if every one avoweth severally the taking of all the Oxen it shall abate, because they cannot have return accordingly, 21 R. 2. *Avowry* 262. So where every one avows the taking of one Oxe severally, 3 H.6.f.44.

V. *Where one Joyntenant or Parcener may avow for his moyety, or may confess as Bayliff of the other, and where Avowry may be by Husband and Wife, or by the Husband alone.*

**A** Rent charge discends to two Parceners, the Bayliff of the one confesseth for her portion only before partition, and good, as if there be three Parceners, and the one grants to two 100. s. Rent, *scil.* 50 s. to the one, and 50 s. to the other, for equality of partition &c. The Bayliff of the one confesseth for his 50 s. only, 2 H.6.fol.14. *Avowry* 3.44 Ed.3. *Avowry* 75. But there it was after partition.

Conusance made as Bayliff of the one Executor for his part by his Commandment, tis nought; for the one Executor cannot have an Action alone, nor an Avowry, which is in lieu of an Action, and there it is said, that a man may not make Conusance as Bayliff of one of the joyntenants alone, nor as Bayliff of the Husband alone, where it is in right of his Wife, and if the one joyntenant, or one Executor himself avow, he may avow for the moyety for himselfe, and confess as Bayliff of his companion for the residue, otherwise it shall abate, 12 R. 2. *Avowry* 88. 16 Ed. 3. *Avowry* 23.

If in a Replevin against two joyntenants, the one doth appear by his Bayliff, the other in proper person denieth the taking, yet the Bayliff may acknowledge the taking for his Master, and likewise for the other who hath denied it, because he cannot acknowledge for the one alone. But if the sole Avowant deny the taking, his Bayliff may not make acknowledgement 14 Ed. 3. *Avowry* 118. So if both the Joyntenants have appeared in their proper persons. But if I, who have commanded my servant to distrain, confess the taking tortious, this shall not bind him, *per Danby*, 8 Ed.4. fol.17.

Husband and Wife, and the three joyntenants of a Corody, with a clause of distress, the Husband ought to avow for himselfe and his Wife, and

and to make Conufance as Bayliff of the other, 27 *Ed. 3. Avowry* 136. So if the one Parcener be to avow, 3 *Ed. 2. Avowry* 187.

But if all the joyntenants or Parceners do appeare, every one may avow for himself only 5 *Ed. 2. Avowry* 208. But it seems that the one Jointenant of a Common may not put in the beaft of his Companion, but as his Bayliff, 15 *H. 7. fol. 10.*

If the Lord hath used to have 20 s. every year of the Deciners within his Hundred, and to levy it of the chiefe Deciner, and he hath a distrefs for contribution, fuch Deciner may avow in his own right, and not as Bayliff &c. 6 *Ed. 3. Avowry* 191. So of a Commoner, 7 *Ed. 3. Avowry* 149.

If there be a Corporation of Mayor and Bayliffs, and they have toll by prefcription, the bayliff being to avow fhall not make conufance as Bayliff to the Mayor, but fhall avow &c. 20 *Ed. 3. Avowry* 29.

Guardian in foccafè fhall make conufance for the heir, but fhall not avow because he is not to have the thing in his own right, 7 *Ed. 3. Avowry* 150.

**V I.** *Avowry in fuch place, whereof the place in the Count is parcell, when the Plaintiff fhall fay, that it is not parcell.*

**A** Vowry for Rent-charge in the place where &c. the Plaintiff may fay, that the place &c. was not parcel of the Land charged, 3 *H. 6. fol. Avowry* 4.

A Replevin in *D.* the Defendant avoweth in a Close called *S.* whereof the place &c. for Rent-charge, this is not good, without traversing in *D.* But if he avow in part of the Land called *S.* whereof &c. it fhall be intended to be the fame place whereof the Plaintiff declared, without traverse, or to fay, that it is known by the one name, or the other, and the Plaintiff may furmife it, 4 *H. 6. fol. 9. Avowry* 5. But the Book at large takes not this diversity. And fee, one may juftifie, that the place was belonging to *T.* who infeoffed him, but the better pleading is, that *T.* was feifed of a house &c. whereof the place &c. and him infeoffed, 3 *H. 6. fol. 35.*

The Avowant faith, that *S.* whas feifed of Land called *W.* and chargeth the Plaintiff, that the place where &c. is not parcel of the Land called *W.* and was compelled to traverse that it was not parcel of the Land charged, 44 *Ed. 3. Avowry* 75.

The Defendant avoweth that the Plaintiff holdeth a Plow-land of one *T.* by fervice, as parcel of the Mannor, the Plaintiff may well fay, that the fervices are not parcel, yet hereby he acknowledge the Land within his fee &c. 48: *Ed. 3. Avowry* 84.

A Replevin of taking in *D.* in a place called *S.* the Defendant in *D.* in a place called *E.* without that, that he took in *S.* the Plaintiff faith, that *S.* and



and *E.* were one place known by both names, without that *E.* is another place holden no form, but he may say, that he took in *S.* known by the name of *S.* and *E.* without that that he took in *E.* known by such name only, 3 H. 6. fol. 45.

The place is traversable in a replevin, not in trespass, 22 Ed. 4. fol. 91.

**V I I.** Where the Avowant ought to have seisin by the hands of a person certain.

Note, it was adjudged, H. 17 Car. in Co. B. in Latton and Granges case. That traverse of seisin generally by the hands of &c. is not good without admitting a Tenure.

If prescription be made upon a certain person and his ancestors, there the avowant shall alwayes lay the Seisin by the hands of a certain person, but if avow for rent of a Town or Comminalty, Seisin by the Town is sufficient &c. 4 H. 6. fol. 29. Avowry 7. 14 H. 4. Avowry 60.

If the Lord of a Mannor or Town prescribe to distrein for Fines or such like, of all the Tenants within the precinct, as for marrying of his daughter without licence, there Seisin needs not, 43 Ed. 3. fol. 5. Avowry 68. So the Lord may distrein his Bedle appointed by his Tenants, by prescriptions to gather his Rent &c. without laying Seisin certain, 44 Ed. 3. Avowry 73.

The Sheriffe may avow for his fee by prescription, for not coming to the Turn, upon an Abbot; and laid the Seisin in his predecessor: it seems this needed not, if he had just cause: but see, this is extortion, 42 Ed. 3. fol. Avowry 66.

He that avoweth for an amerciament in a Court Leet, for not coming, or for purpessure, needeth not to alledge Seisin, 4 Ed. 3. fol. 10. Avowry 161. 8 Ed. 2. Avowry 212. 14 H. 4. Avowry 60.

He that avoweth for suit reall making Title by prescription, ought first to alledge Seisin certain, and after generally by the hands of the Tenants, 11 Ed. 3. Avowry 101. for it belongeth not of right to the Mannor or the Court.

He which avoweth for a Fine of alienation, or for a Herriot appendant to an Honor or Mannor, must lay the Seisin certain, and this by the hands of the ancestor of the Tenant, but it seems sufficient by the hands of any Tenant, 14 H. 4. fol. 3. Avowry 60.

Avowry upon Lessee for life, or my Donee in tail, is good without laying the Seisin, 8 H. 6. fol. 18, & 19. So of escuage alledged, yet not traversable, 13 H. 4. fol. 6. and so of relief.

In Avowry for services, Seisin shall be alledged by a certain hand, and such who was a sufficient Tenant, and due, otherwise it is not good, 11 H. 4. fol. Avowry 34.

**VIII. More of Seisin, and what Seisin is sufficient, and by what hands to maintain Avowry, and where otherwise sufficient.**

**S**eisin by the hands of the Tenant at will, or of him that hath nothing is not good, 8 H.6. fol. 18, & 19 avowry 8. nor by the hands of a Termor to make privity &c. 2 H.6. fol. 4. and Seisin by the hands of the Disseisor shall bind the Dissee for services due onely, and Seisin by the hand of the Feoffor after alienation shall bind the Feoffee, 8 H.6. fol. 18, & 19. So alwayes Seisin by the hands of him upon whom the Avowry should be, shall bind the party who cometh afterwards &c.

*Vide C. 4. part  
Bevils case  
acc.*

But Seisin of one jointenant shall not bind the other, so neither the payment of the Termor or Bailiff, 39 H.6. f. 3. 2 H.6. f. 3. 8 Hen. 6. fol. 18. seil. for making privity: but some think that Seisin by Guardian or Termor is sufficient to have an Assise, and they agreed that Seisin by the hands of the Tenant of the freehold is sufficient, 8 assise p. 16. vide 20 H.6. fol. avowry 11. He in the remainder bound by such Seisin by Tenant for life, and Seisin by Tenant by the courtesie binds the heir, 12 Ed. 3. avowry 104. and Seisin by the hands of a Husband binds the wife, 11 H. 4. f. 28. avowry 54.

Seisin of escuage is seisin of homage and fealty, 10 H. 7. fol. 15. 31 Ed. 3. avowry 103. 21 Ed. 3. avowry 115. 188. 19 Ed. 2. avowry 224. or relief, 4 Ed. 2. avowry 200.

*C. 4. part 9 acc.  
13. E. 4. 7.*

Seisin of Rent is of fealty, 8 Ed. 4. fol. avowry 36. 29 Ed. 3. fol. 27. avowry 150. 5 Ed. 2. 209. 188. 19 Ed. 2. avowry 224. seisin of Rent is sufficient for relief, 4 Ed. 2. avowry 200.

*C. 4. part 9. acc.*

Seisin of homage is seisin of fealty, Temp. Ed. 1. avowry 229. 3 Ed. 2. avowry 188.

Seisin of homage is sufficient for relief, without Seisin of escuage 13 H. 4. fol. 6. 197. 31 Ed. 3. avowry 131.

The Lord in Knights service avoweth, and alledgeth seisin of homage onely, or seisin of escuage onely, it is sufficient for homage, 29 Ed. 3. avowry 122. and seisin of homage is sufficient to avow for Knights service, Ed. 1. avowry 229. *Watson* reports that seisin of homage is sufficient for all services, and so it seems by the Books.

It is held that seisin of Rent is seisin of all services to make avowry, 44 Ed. 3. fol. 11. M. 8. Ed. 3. avowry 153. 45 Ed. 3. fol. 28. although of divers natures, and attorneyment by a penny before the day of payment is sufficient for an Avowry, not for to have an Assise, 5 Ed. 4. fol. 2. and be it by the Tenant or his ancestor, 20 H. 6. fol. avowry 12. 35 H. 6. fol. 51. avowry 27. 40 Ed. 3. fol. 34. 34 H. 6. fol. 46. 42 to have an Assise assise 101.

*C. 9. part, it is  
no actual seisin  
of fealty, to  
maintain an  
Assise.*

If I be seised by coercion of a distresse, by the hands of him who holds  
not



not of me, it is sufficient for him to traverse the tenure, without speaking of the coercion, but if he hold of me, he ought to acknowledge the tenure, and to incoachment to say, that it was by constraint &c. 22 H.6. fol.

*Avowry* 14. 47 Ed.3. fol. 7. where it is held, that seisin by constraint of services due, is good, and void for the incoachment. And seisin by excessive distress is seisin by constraint, 42 Ed.3. fol. *Avowry* 67.

Seisin had time out of mind, by constraint of distress shall not be always avoided, 13 Ed.4. fol. 6.

Suit to Court had by Coercion may be avowed for this cause, 32 Ed.3. *Avowry* 32. 10 Ed.3. fol. *Avowry* 157.

Seisin of a Rose the first year, is sufficient to have an Assise of rent of the next 5 Ed. 4 fol. 2. 44 Ed. 3 fol. 32. 15 Ed.3. *Execution* 63. So the seisin of the rent of one Term, is sufficient to have an Assise at another Term, 12 Ed.4. fol. 7. 5 Ed.4. fol. 2. So seisin of a peny before the day of payment, 34 H.6. fol. 46.

The Lord hath had fine and amerciamment of his Tenants for not coming to his Court, this is not seisin of the suit. *Keble*, seisin of part, is not of the whole in *per qua servitia*. But seisin upon recovery by Turfe or Twl. is sufficient to have an Assise, or to avow for all services, and recovery in right is by it selfe sufficient title in a *Quare impedit*, without presentment, 13 H.7. fol. 16. 45 Ed.3. fol. 26. 5 Ed.4. fol. 2. 37 H. 6. fol. 42. 3 Ed.3. *Avowry* 444.

If a man grant four severall rents of severall natures, Attorneyment by a penny in the name of all is sufficient to avow, 25 Ed.3. fol. *Avowry* 134. 22 book of Assise p.96. *Attorneyment* 14. *Contra* 7 H.4. fol. 10. *Avowry* 56. *Wilby* saith, that the payment of a rent of a Term to come is not sufficient to avow. *Hill contra*, 25 Ed. 3. before, and 10 Ed. 3. fol. *Avowry* 157. agreeth to the 25. before, and that it is sufficient without alledging seisin in the Grantor. Agreeth, Ed. 1. *avowry* 251. Or he in remainder may avow by Attorneyment made to the Grantee for life of a Signiory. But *contra hoc*. 45 Ed.3. fol. 28. *Vide* the difference between a fine and a Deed, 20 H.6. fol. 7.

A man may avow by Attorneyment for the services only of right due, and therefore he ought to alledge seisin of the services before, if he will avow, 20 Ed. 3. *Avowry* 131, *per Watson*. But there the seisin was by the hands of the Tenant in taile, and therefore he was compelled to alledge seisin of the same service before the taile. *Vide contra* 10 Ed. 3. *supra* F. But it seems he ought to alledge seisin in his Grantor before the Attorneyment, 41 Ed. 3. *avowry* 65. But *Vide* 20 H. 6. fol. *Avowry* 11. that it needs not, 4 Ed. 2. *avowry* 203.

Seisin of fealty is not sufficient to have an Assise, 20 Hen. 3. *assise* 433.

But *Fortescue* thought attorneyment sufficient seisin to have an assise, 28 H. 6. fol. 8. which is not Law, if it be not paid as part of the rent, 7 Ed. 3. fol. *avowry* 147. 37 H. 6. fol. 38. *Littleton in attorneyments*.

*Fortescue*

*Forfeiture*, that a recovery adjudged was sufficient to have an Assise, 28 H.6.f.6. *contra*. 21 Ed.3. *Scire fac.* 2 H.4.fol.25. 37 H.6.fol.15. & 16. 50 Ed.3.fol. *Collusion* 27. but there it is said, that a recovery in a *Cessavit* giveth Seisin, for it shall be tendred in Court, & *vide* 15 Ed. 4. fol.10. that a recovery adjudged, is not execution.

Seisin Land in the ancestor and heir is double, for the first binds, but seisin in Lessee for life, and he in remainder is not double, 20 H.6. fol. *Avowry* 11. & 12. and seisin in the avowant, or his ancestor is sufficient, 34 H.6.f. *Avowry* 23. & 24. 13 Ed.3. *Avowry* 102. 31 Ed.3. *Avowry* 103.

An Abbot may avow by his own seisin, or the seisin of his predecessor, 34 H.6.fol. *Avowry* 25. 11 H.4.fol. *Avowry* 53. but if the seisin in his predecessor, he ought to say that he held of his predecessor, but the heire may well say, that he holds of himself, and shall lay Seisin in his ancestor, *ibidem*, and so made the successor, 47 Ed. 3. fol. *Avowry* 82.

If the Lord convey by a *Que* estate, he shall alledge the certainty of the Land holden, lay the seisin in the Grantor, and say by the hands of what tenant, 33 Ed.3 *Avowry* 253.

Feoffee bound by seisin by the hands of his feoffor, 41 Ed. 3. *Avowry* 65. 20 H.6. *Avowry* 11, 12, 13. 7 Ed 3.fol. *Avowry* 144. 18 Ed.2. *Avowry* 217.

Seisin of services Land in the Grantor in Lease for life, and in him remainder in tail or fee seemeth double, if the grant were by fine. *Quare* if by Deed, for all as one estate, 20 H.6.fol.7. & 8 *Avowry* 217.

If tenant for life of a Mannor attorn to the Grantee of the reversion, this shall bind all the tenants *peravaille* after 20 H.6. fol.8. otherwise it is of a Seigniorie in grosse.

After that the Grantee himself is seised of services, he may avow without laying seisin in the grantor &c. 9 Ed.2. *Monstrants* 41. 20 Ed.3. *Avowry* 131.

Tenant in Dower avoweth by seisin of her husband, 14 H.4.fol. *Avowry* 60. and this without attornment. *Temp.* Ed.1. *Avowry* 227. and the heir may avow upon the tenant in Dower without seisin, *Avowry* 159. and a man upon his own Feoffee before the Statute, 2 Ed.2. *Avowry* 185. but see there, that the grantee of the Seigniorie nor his heir may not avow without seisin &c.

The Lord shall not be estopped by acceptance of services, by the hands of disseisor generally, but if he accept them of him, as of his right tenant, he shall, but otherwise it may be understood, that he accepted for payment as of his Bailiff, 41 Ed.3. fol.16. 16 Ed. 3. *Avowry* 90. 2 Ed 3. fol.33. *Avowry* 170.

Seisin by tenant in tail shall bind the Issue for services due, not otherwise without seisin also alledged in the Donor, 31 Ed. 3. *Avowry* 131.

Where the Avowant conveys to the Plaintiff a particular estate, he shall shew the commencement thereof, and lay the seisin in the Donor or Lessor, although



although he hath been seised by the hands of the particular tenant: So where he conveys the Fee to the Plaintiff by Feoffment, if he hath not been seised by the hand of the Plaintiff, but if he hath, he may well avow upon him without other seisin or conveyance, 41 Ed. 3. fol. 25. of rail, 20 H. 6. fol. 7. 8. *Avowry* 11, 12, 13, 14.

Seisin of services during the time that the tenant is in ward of the King, is sufficient to avow, 13 H. 7. fol. 15. and there fol. 16. seisin of a Fine for not doing of services is sufficient to avow &c.

*IX. The form of pleading when they agree not in the quantity of the Land, or in the quantity of the services.*

**I**F the Lord avow in 20 acres for 2 s. rent, where the tenant hath aliened 10 acres to a stranger before, the Plaintiff shall say it, and that the stranger hath tendered &c. and as to the residue *nothing arreare*, and for the part of the stranger judgement of the Avowry, but when he saith, that he himself holds 20 acres, and others &c. how he shall plead, then see 20 H. 6. fol. 22. *Avowry* 13.

The Avowant supposeth four yards of Land holden by fealty, and 10 s. 4 d. rent, the plaintiff saith, that he holdeth two Cottages by fealty and 6 s. 4 d. without that that he holds the four yards as he alledgeh, Judgement &c. this is held taken in Bar of the Avowry, for this dischargeh of the Land, he ought also to answer to the seisin, *Quare*, but after he shews that he holds by severall tenure, 5 H. 5. fol. *Avowry* 48.

Avowry for 20 s. where in truth he holds by 10 s. and the other 10 s. is had by constraint, he may confesse the tenure without traversing that of the residue, but may say as to the residue, that it is by constraint, &c. 30 H. 6. fol. *Avowry* 19. But if the Lord avow upon a feoffee for service of 20 s. it no plea that the feoffor enfeoffed him to hold by 10 s. for he must render as his feoffor should &c. 7 H. 4. fol. *Avowry* 51.

If the Lord make severall avowries of two acres holden by one entire service, the plaintiff may shew the matter in abatement of the Avowry, but then it behoves him to alledge, that he is tenant of both the acres, otherwise he shall not abate the Avowry made upon a stranger &c. 43 Ed. 3. *Avowry* 70. So where an entire Avowry is made upon severall tenures, 34 Ed. 3. *Avowry* 258. and if the Lord make an entire Avowry in three acres for fealty, suit &c. the Plaintiff may say, that the one acre is held by suit, the other by 12 d. rent, and the third by fealty for all services, Judgement of the whole Avowry, 41 Ed. 3. fol. *Avowry* 77.

If a stranger be Tenant of part, where the tenure is by 10 s. and 10 s. is encroached upon the the feoffor by coercion, he may say that the stranger is tenant of part, and that he holdeth the residue by 5 s. Rent, and that it is not arreare, and that the other 10 s. was by coercion, and it is not double, for the coercion is all the effect, 47 Ed. 3. fol. *Avowry* 82. and

and note that he saith, that the stranger is seised of parcell, without saying, that the avowant had notice, for the Avowry is good upon the Feoffee for the arrearages after the Feoffment without notice, 47 Ed.3 fol.4. 2 E.4.6. acc.

Also it is a good plea, that he was enfeoffed of two acres by 2 s. Rent, and B. of other two acres to hold by 2 s. Rent, Judgement of the Avowry upon him, for 4 s. in four acres, 31 Ed.3 fol.2. *Avowry* 114.

If the Plaintiff saith, that he holdeth by lesse Rent, and that it is not arrear, if the other reply that it is arrear, and maintain not the Avowry it shall abate, 48 Ed.3. fol. Cess.16. but it shall not abate, but for the portion, *per totam curiam ibid.*

*X. The manner of conveying a Seigniorie or Rent to the Avowant, or of the Tenancy of the plaintiffe, and where it shall be traversed.*

**T**HE Bailiff of G. confessed the taking, because one W. held of J. the Grandfather of G. seised of this service, and by his hands, and made discent to G. and the Plaintiff hath the estate of W. so acknowledged &c. and holden no plea, that W. had nothing at the time, for this is *non tenure*, which is no plea in Avowry, but he might well say, that he had nothing but at will of T. who entred and enfeoffed us, *vide* 8 H.6. fol. *Avowry* 8.

A Bailiff justifieth upon S. as the true Tenant by the Mannor, because B. was seised, and held of H. who was seised &c. and granted the Mannor and services to W. who granted them back again to H. for life, the remainder to the defendant in tail, and conveys the Tenancy by discent of B. to the Plaintiff &c. 20 H.6. fol. *Avowry* 11.

A Bailiff justifieth by grant of the Seigniorie to his Master, that one T. ter-tenant enfeoffed S. of the Tenancy, who attuned, whose estate the Plaintiff hath, the plaintiff saith, that R. was seised of the Tenancy, and granted it to T. for life, and granted the Reversion to us and another, and T. attuned, without that, that S. had any other estate at the time, and a good plea, if he had made privity between T. the Feoffor and R. &c. 35 H.6. fol. *Avowry* 27.

The Lord may convey the tenancy to the Plaintiff of W. by *Que* estate, and avow &c. the Plaintiff saith, that he is seised joyntly with his wife of the feoffment of J. not of W. Judgement of the Avowry, and good, for where the Lord acknowledgeth the tenancy, he may also acknowledge the manner thereof, 22 Ed.4. fol.35. *per Watson*, but see there it not spoken of whose feoffment they held jointly &c.

A Bailiff made Conscience, for that, that B. held of M. and J. the father of M. seised by the hands of S. father of B. the Plaintiff hath aid of B. and they say, that B. was son of K. not the son of S. *Prisot*, it is



no plea, for if *B.* were not the son of *S.* but a disseisor, the Avowry lieth against him. *Moyle*, also the plaintiff is a stranger to the Avowry, who shall not plead it, *M.34 H. 6. fol. 2. Avowry 24.*

An Abbot avowed, for that *M.* held of his predecessor, who was seised &c. and enfeoffed the plaintiff, upon which he avowed &c. and the Plaintiff said, that *M.* had nothing but in right of his wife, who had issue *J.* and died, *J.* entred and enfeoffed the plaintiff, Judgement &c. and a good plea, for although in what manner soever the plaintiff be in, the Avowry may be well made upon him, yet he ought to convey according to the matter, for Avowry made upon me as heir to my father, where I am in, as heir to my mother, it shall abate, *11 H. 4. fol. 28. Avowry 54. 22 Ed 4 fol. 35.* so Avowry made upon me as heir, where I am in by feoffment of my father, *4 Ed. 3. fol. Avowry 163. and 160.*

A Prebend laieth seisin in his Predecessor, and conveyeth to him by Collation from the King, the Temporalities being in his hands, he needeth not to speak of the King had not other estate, *11 H. 4. fol. 17. Avowry 53.*

An Abbot avows, for that he and all those estate &c. have been seised of the Hundred, and good without shewing how he came to it, otherwise it is in a *quo Warranto*, *11 H. 4. fol. Avowry 57.*

One avoweth as Lord of a Hundred, and layes seisin of suit by the hands of *R.* and prescribes in a *Que* estate of both parts, and that *R.* enfeoffed the plaintiff, and good, without saying what estate *R.* had, for it shall be intended fee by the Feoffment, *7 E. 3. Avowry 144.* the plaintiff saith, that *R.* had nothing but at will &c.

The plaintiff conveys the Mannor and Seigniorie to the avowant by a *Que* estate, without shewing how, and the Tenancy to himself by a *Que* estate, and thereof shews a deed to hold by lesse services: the avowant said, that he by whom the Plaintiff intitles us, never had any thing &c. and it was said, that it is no plea, wherefore he said, *nul tiel in rerum natura* &c. *P. 20. Ed. 3. Avowry 246.*

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XI. *Where in an avowry one may conclude upon his true Tenant, or true Tenant by the Mannor, or upon the Tenancy by the Mannor, and where upon the matter.*

**T**ENANT in tail, is Tenant by the Mannor to the Dower in Reversion, but if the fee be in remainder over, he is very Tenant by the Mannor to the Lord Paramount, and in the first case the Donor is very Tenant to the Lord, and Tenant for term of life, where the remainder is over, is very Tenant by the Mannor to the Lord, otherwise he in Reversion is very Tenant to the Lord, *20 H. 6. fol. Avowry 12. 20 Ed. 3. Avowry 131. 2 Ed. 3. fol. Avowry 170.*

He in Reversion with Rent reserved grants the Reversion, the tenant for life

life attorns, the Grantee is bound in a Statute to T. who hath execution, and avows upon the Lessee as his right Tenant by the mannor, 13 H.4. *avowry* 237. but note, that the Tenant in tail, in Dower or other particular tenant of a Seigniorie ought to avow as upon their tenant by the Mannor, not their very Tenant by the Mannor, 26 H.6. fol. *avowry* 17. 4 Ed.3 *avowry* 162, 163.

Tenant by the courtesie of a seigniorie, the ter-tenant makes a Lease for life rendring Rent, he in Reversion grants it, the Lessee attorns, the grantee dies, his heir within age, Tenant by the courtesie seisseth the Ward, and distreins for Rent, and avows upon the matter as within his fee, and held a good Conclusion, 38 H.6. fol. 23. *Avowry* 29. 7 Ed.3. fol. ultimo.

Grantee of a Reversion avows for Rent reserved upon a Lease for years as upon the matter, 40 Ed.3. fol. 34. *Avowry* 64. 38 Hen.6. f. 23. So where *Avowry* is upon an execution, or if they do avow, for in these cases the Rent is but a Chattell, 34 Ed.1. *Avowry* 233.

**XII.** *Avowry for Rent after it is determined, and where one shall be compelled to justifie, and where by plea of the Master, the plea of the Bailiff or servant is taken away, or where he shall make satisfaction.*

**T**ENANT for life rendring Rent, he in Reversion distreins, the Tenant surrenders, yet the Lessor may avow, because he is to have the Rent, but if one distrain for homage, and the Tenant dieth, now he shall be put to justifie, because he cannot have the homage, but if he who is Tenant for life dieth after Distresse taken for the Rent, yet the *Avowry* is good &c. 19 H.6 fol. 41. *Avowry* 10. 22 Ed.4. fol. 36. the term expired.

If the Lord distraineth his Tenant for homage, after that he hath aliened in fee to a stranger, and before notice, the distresse is good, but if after notice, it behoves him to justifie, for he shall not have the homage, 7 Ed.4 fol. 26. 2 R.2. *Avowry* 83. & 8 Ed.4 fol. *Avowry* 36. & 22 Ed.4 fol. 36. where it is also said, that if the Lord had possession of the distresse within his fee, and the Tenant chase it out, he shall take it again well in another fee, and may avow, and 2 R.2. it is said, if the Lord distrain for suit after the alienation, he may avow and have return, yet he shall not have the same thing, but recompence for it, *Avowry* 83.

*Catesby* said, if the Lord avow for a hawk in arreare before alienation of his Tenant upon the Feoffor he may avow, and if upon the Feoffee he must justifie, 22 Ed.4 fol. 36.

In a Replevin the Defendant may justifie for Rent, and needs not avow, 15 Ed.4 fol. 29. So a Bailiff justifie and will not make Conusance for doubt of disclaimer and good, and he shall not have a return, 9 Ed.4 fol. *Avowry* 38.

In a Replevin against the Master and servant, the servant acknowledgeth  
as



as Bailiff, the Master justifieth whereby the acknowledgement of the Bailiff is void, because it appears that the Master would not have a Return, and although the Master doth avow, the acknowledgement of the Bailiff is but a justification, & sic, *hic* for to excuse him of damages, 35 H.6.fol.

*Avowry* 47.45 Ed.3.fol.1.

In a Replevin against two, the one denieth the taking, the other acknowledged it as his Bailiff, and hath aid of him after issue, but he could not joyn. *Quare*; whether this acknowledgement be any other then a justification, 42 Ed.3.fol.6. and *vide* 15 Ed.3. *Avowry* 107. where he shall not have aid in this case, and it was holden that the Bailiff cannot make acknowledgement to have a return for him that denied the taking, but he may acknowledge as Bailiff to him, and to another for the advantage of the other to have a return, 14 Ed.3. *Avowry* 118. 15 Ed.3. before.

Gardian in Socage made a Conufance for the heir, but he shall not avow, 7 Ed.3 fol. *Avowry* 150.

XIII. Where a stranger or privy to an Avowry may plead a deed to estoppe the avowant, and who shall have a ne injuste vexes, or contra formam Feoffamenti.

THE Lord may avow upon the Mesne for many services which he ought to do, the Tenant *paravale* may not say, that T. whose estate the avowant hath, enfeoffed the Mesne, whose estate he hath &c. by this deed to hold by lesse &c. Judgement &c. because he is a stranger to the Avowry, 22 H.6 fol. *Avowry* 14. also a stranger to the deed, so he may not plead it by way of estoppell, 7 Ed.3. fol.8. *Avowry* 143. but note, the Executor may say, that the Ancestor of the avowant released all his Seigniorie to T. whose estate of the Testator he hath, so out of his fee, and good, but he may not conclude to the estoppell, H. 34. Ed.3. *Avowry* 257. P.18 Ed.3. fol. *Action upon the Statute* 15.

But where the Lord avows upon the plaintiff for 10 s. he may say, that T. whose estate the Lord hath, by this deed confirmed the estate to S. whose estate the plaintiff hath by 2 s. for all &c. Judgement if &c. 30 H.6 fol. *Avowry* 20. 33 H.6 fol. *Confirmation* 3. P.26 Ed.3 fol. *Avowry* 246.

The Tenant forejudgeth the Mesne, the Lord avoweth upon the Tenant for homage, and Rent due before the forejudgement, and hath seisin by the Tenant, and by the Mesne of homage, the Tenant may not plead the deed of him whose estate the Lord hath to the Mesne, to hold by lesse services &c because both strangers, and the Tenant or his ancestor hath done homage, 7 Ed.3.3.fol.8. *Avowry* 143. But the plaintiff said, that T. whose estate the avowant hath enfeoffed his Grandfather of the same Land by this deed, by lesse services &c. and it was holden, that although the

the avowant hath his seisin time out of mind, that he shall answer to the deed, *Quare*, for seisin is sufficient to avow, 22 Ed.3 fol. *Avowry* 133. 14 Ed.3. *Cess* 28. but note, it is said, that at the Common Law, seisin is sufficient, but by the Statute seisin of many things cannot help against my deed, or the deed of my ancestor, 11 Ed.3. *Avowry* 10. 4 Ed.2. *Avowry* 201. and the Statute of *Maclebridge* cap.9. is understood of release or Confirmation, as well as Feoffment. *Quare*, it seems it gives the form *contra formam Feoffamenti*.

The Plaintiff said, that he whose estate the plaintiff hath did enfeof R. by his deed of partell, by 4 s. and another partell to hold by 6 s. for he should make severall Avowries, and it is held that the avowant shall not have the tenure entire, but shall answer to the deed, and that this plea is given to the plaintiff instead of a *Ne injuste vexes &c.* yet after the avowant had the averment notwithstanding the Deed, 32 Ed.3. *Avowry* 114. *Pigor*, it seems because he is a stranger to the Deed, but the party or privy should be estopped, 11 Ed.3. *Avowry* 100.

But where the Plaintiff pleads Confirmation of the ancestor of the Defendant to his ancestor to hold by lesse services, the Defendant may say, that he and his ancestors have been seised &c. without that he had any such ancestor, 16 Ed.3. *Avowry* 93. 8 Ed.3. fol. *Avowry* 154. & 26 Ed.3. *Avowry* 246. without that, that he hath his estate, 30 H.6. *Avowry* 20. and it is a good estoppel for the plaintiff, that the ancestor of the Defendant did give to his ancestor in tail by deed, 17 Ed.3. fol. *Avowry* 96. 7 Ed.4. fol. *Avowry* 34. 32 Ed.3. *Avowry* 114. *Fitzh.* saith, fol. 163. that the Feoffee of the Tenant shall estoppe the Lord or his heir, by the deed of the Lord.

A Prior may avow for relief against the deed of his predecessor, to hold by lesse service &c. for all services for relief is incident to Soccage, & 13 Ed.3. fol. *Avowry* 99.

*Withy* saith, that the Lord shall be estopped by deed held by lesse services, and that a stranger hath pleaded such a deed against a stranger, or against a privy, and privy against a privy, or against a stranger, and well, 32 Ed.3. *Avowry* 114. 19 Ed.3. *Avowry* 122. 19 Ed.2. *Avowry* 224. agreeing of the deed of him whose estate the avowant hath to the predecessor of the Plaintiff, 39 H.6. fol. 8. and this notwithstanding seisin alledged after of divers services, 29 Ed.3. *Avowry* 122. 6 Ed.2. *Avowry* 210.

Grantee of a Seignior who had seisin of Homage, was estopped afterwards by Confirmation of his grantor in *Frank almoigne*, 31 Ed.1. *Avowry* 244.

Grantee of a Seignior avowed upon the issue in Tail for Homage, where his Tenure was by Fealty onely, and Land-seisin in the ancestor of the Tenant in Tail &c. the issue shewed this matter, and avoided the seisin without any deed, proving the tenure of the Donor &c. which he should not have done if he had been Tenant in fee simple, without shewing the deed, 20 Ed.3. *Avowry* 131. &c.



If the Tenant hath a deed of a tenure by lesse services, then he himself hath acknowledged in Avowry, he shall never avoid the surplus, nor shall have *injuste vexes*, but if he acknowledge to hold in Knights service, or hold in Soccage by deed, his heir may avoid it in an assise against the Guardian, but not the surplusage of the same nature. *Quare* 46 Book of Assise. P. 357. 7 Ed. 3. fol. 8. and there it is said, that a stranger to the deed shall not have a *ne injuste vexes*, nor a *contra formam feoffamenti*, with this agrees *Fitzherbert* fol. 11. & fol. 163. nor a stranger may not plead a deed of estoppel against a stranger, 7 Ed. 3. fol. 8. 32 Ed. 3. Avowry 114.

At the Common Law the Tenant was bound in Avowry by seisin had, although he had a deed by lesse service, but had his remedy by a *ne injuste vexes*, but had it not against the grant of the Seigniorie: so he shall not avoid the seisin in Avowry by any thing, untill the statute which gives *contra formam Feoffamenti*, but now seisin shall be avoided by answer if he hath a deed of lesse services *per Tr.* although a stranger to the deed, who conveyeth by a *Que estate*, 11 Ed. 3. Avowry 100. 14 H. 4. fol. 2. of a stranger, but 10 Ed. 3. fol. Avowry 157. the Tenant which pleaded was privy, and he pleaded against the Grant of the Seigniorie &c. 4 Ed. 2. Avowry 202. 19 Ed. 3. Avowry 122. vide 10 Ed. 3. Avowry 155.

*Parne* said, that remedy is not given by *contra formam Feoffamenti*, nor by answer against encroachment by the Statute, but where the services are expressed in the deed, and in no case but for suit, of which he may be discharged by plea, although not expressed in the deed &c. 10 Ed. 3. fol. Avowry 157 4 Ed. 2. Avowry 200. 31 Ed. 3. Cess. 22.

In like manner the Feoffee shall not have a *ne injuste vexes*, nor *contra formam Feoffamenti*, and therefore without a deed shewed he shall not avoid the seisin had, nor hath he any remedy, 10 Ed. 3. Avowry 157. 18 Ed. 2. Avowry 217. *Fitzh.* saith, that the Feoffee shall no way avoid the seisin had by the Feoffor fol. 11.

Tenant in Tail shall have none of these two Writs, and therefore may avoid seisin by plea; but there *Wilby* said, that the Tenant in fee shall have a *ne injuste vexes* upon seisin had, where he hath not a deed of the tenure, 20 Ed. 3. Avowry 131. and *Fitzh.* fol. 10. speaks not of any deed, but if he hath a deed he shall avoid the seisin had, 10 H. 7. fol. 11.

*Contra formam Feoffamenti* lieth upon release, Confirmation or grant against him that made it, not against his Grantee, nor shall it be pleaded against his Grantee. *Quare* 11 Ed. 3. Avowry 100. *Fitzherbert.* agreeth fol. 163. and that it lieth upon Confirmation, 16 Ed. 3. Avowry 93. But it seems that the deed may be pleaded against the grantee, this writ, but is 11 Ed. 3. &c. and of Confirmation, 16 H. 3. Avowry 243. 31 Ed. 1. Avowry 244

*Contra formam Feoffamenti* lieth not for suit reall, 7 Ed. 2. Avowry 207. but if it be contained in the deed, that he will not have suit, it lieth, or it may be avoided by answer, 8 Ed. 2. Avowry 212. nor lieth it for relief, nor any other thing incident to the tenure, 4 Ed. 2. Avowry 220.

Lord and Tenant without deed, the Lord encroacheth and grants the Seigniorie, the Tenant attorns. *Quere*, if he have any remedy against the Grantee who distrains for the encroachment, for if the Tenant had aliened after such encroachment, the Feoffee should not have remedy *per Fitzb. fol. 11.* *vide 14 H. 4. by Thirning.*

**XIV.** *Avowry after disclaimer upon the same person or his Heir.*

**A**vowry may well be made upon the same person who hath disclaimed before, for the same Rent, or he may have an assise of rent, 26 H. 6. *Avowry* 18. But the Law seems otherwise, and that he may yet have Customes and services, or right of Ward, because the right of the Seigniorie is not gone, but the possession by which &c. but by *Shard and Wilby*, the Seigniorie is gone to all intents, 44 Ed. 3. *Disclaimer* 24. and <sup>13 H. 7. 17.</sup> *Bryan and Keble* held, that all actions of right remain as an escheat, *Ces. acc. savit* &c. but no action of the possession, as of Ravishment of Ward &c. 16 H. 7. fol. 1.

And it is a good counterplea to the disclaimer, to say that he hath aliened after the taking, or that he is not tenant of the freehold at the time of the disclaimer &c. *M. 12. Ed. 4 fol. Avowry 40.*

**XV.** *When Avowry may be made upon the husband and wife, or upon the husband alone for services of the Land of the wife.*

**T**he Avowry shall be made upon the husband and wife, of the right of the Wife for all services, but for homage, and it shall be upon the husband alone after issue &c. 13 H. 6. *Avowry* 20.

And Avowry for homage upon the husband alone before issue, where they were joint purchasors was abated, 7 Ed. 4. fol. 26. 39 Ed. 3. fol. *Avowry* 62. and upon both for other services, P. 29 Ed. 3. *Avowry* 250.

Avowry making discent of Tenancy to three parceners, for that whereof the one took a husband, and had issue, the Avowry shall be upon the husband and wife, and the others for homage, and good, notwithstanding issue had, but the issue was onely to make the husband and wife privy to the Avowry with the others, 43 Ed. 3. fol. 13. *Avowry* 70. 44 Ed. 3. fol. *Avowry* 76. that it is not maintainable upon both for homage before issue, and *Danby* said, that after issue the husband alone shall do homage, before <sup>8 E. 4. 12.</sup> which no Avowry shall be, but where the husband and wife do purchase jointly, both shall do homage, *Avowry* 36.



XVI. *What persons may traaverse the tenure in Avowry; and where the tenure is traversable, and where not.*

C. 9 part in  
Bucknells Case,  
acc. 12. E. 4. 7.  
Brian. acc.

IF the Lord encroach seisin of services of another nature, the Tenant may avoid it in Avowry by traversing the tenure, for it is not changed by seisin, 8 Ed. 4. fol. Avowry 36. 10 H. 7. fol. 11. 7 Ed. 4. fol. 27. Danby held seisin traversable, if the Seigniorie be by Prescription, but 26 H. 8. fol. 6. agreeth to 8 Ed. 4. and 16 Ed. 4. fol. 12. per Pigot.

But where the encroachment is of services of the same nature, as quantity &c. there it behoves to traverse the seisin, but in trespassse, rescous, assise, Cess. the tenure is traversable, as well upon the quantity changed, as upon the 12 Ed. 4. fol. 7. but note, that in these Cases the Lord avow for Knights service where he held but in Soccage, and so of another nature, but if he encroach more Rent, it behoves to traverse the seisin, or sue an *injuste vexes*, 26 H. 8. fol. 6. 19 R. 2. Wards 165.

Vide Pl. Com.  
15. 7 E. 4. 28.

The Lord avows for Knights service and rent, the Tenant may well say, that he holds by fealty, and a half penny, without that he holds by Fealty, Homage and Escuage &c. because they be of another nature, and there it is said, that he shall traverse the tenure, also if the encroachment be of another quality, though of one nature, as if he held by fealty and Rent, and suit, Rose or a Hank is encroached, but more suit or more Roses encroached for one, they make not the tenure traversable, and if the Lord encroach more Rent, and also another service of another nature and quality, there the seisin of the overplus of the Rent may be traversed, and the tenure of the other service, 20 Ed. 4. f. 17. 30 H. 6. f. Avowry 19.

If the Lord avow for services of another quality, and also for more Rent, and supposeth it payable at two dayes, where it is payable at one, the plaintiff may traverse the tenure, and also the day supposed, yet of the services due he ought to alledge tender, or otherwise to excuse himself of the non payment, or plead that there is nothing arrear, 21 Ed. 4. fol. Avowry 42.

He which holds by Fealty where the Lord avows for homage, and fealty, he may avoid the encroachment, shewing the seisin to be by constraint, without traversing the tenure, 42 Ed. 3. fol. Avowry 67. 20 Ed. 3. Avowry 131.

C. 9 part in  
case of Avow-  
ry.

And a stranger may not traverse the seisin, nor the tenure, but a Copyholder may traverse the tenure, yet he is but Tenant at will, 6 R. 2. Avowry 86.

If the Lord avow upon him that hath disclaimed before, he may well traverse the tenure or seisin 26 H. 6. fol. Avowry 18.

Lord, Mesne, and Tenant, the Lord avows upon the Tenant, he shews that he holds of the Mesne, and Martin thought that he should say, that he

he holds not of the avowant immediately, although he be not out of his fee, *alii contra*, 9 H. 6 fol. 27. *Replevin* 3. So it seems in a formedon of Rent service, 11 H. 4 fol. 10.

XVII. Where a stranger to an Avowry, or he which hath nothing &c. may traverse speciall matter alledged in it, and where he may demurre thereupon for justification, and what Pleas he shall plead.

The Lord may avow upon him in reversion for 20 s. rent arrear such a time. Lessee for years may not say *Rien arrear*, nor that he was not ever seised, but shall plead tender, 2 H. 6 fol. Avowry 1.

And in an Avowry upon him in Reversion, the Termor may not plead the Misnomer of him in reversion, but upon joyning in aid both shall plead, 34 H. 6 fol. 46. Avowry 24. 12 Ed. 4 fol. 16.

He in Reversion dieth his heir being within age, a tenant by the courtesie of the Seigniorie seifeth the Ward, and avoweth for Rent upon the matter, as within his fee, the Lessee may not say, *hors de son fee*, because he is Lord Paramount, but he may traverse the attornment supposed to be upon the Grant of the reversion to the ancestor of the Ward, 38 H. 6 fol.

Avowry 29. So if the Lord grant his Seigniorie for years, and yet he may avow, the Tenant may say, that he hath a granted &c. for which he hath attorned, for this is a speciall *hors de son fee*, 11 H. 4 fol. Avowry 53.

Where the Avowry is upon the Mesne, the tenant shall not plead a release to the Mesne, nor a release made to himself of part of the services, but he may well plead a release of all matters to himself 38 Ed. 3 fol.

Avowry 11. and a stranger may not plead a Release to the Tenant, *ibidem*.

And an Executor where the Avowry is upon the heir may plead *hors de son fee*, but he may not plead a release to the Testator, because a stranger, 34 Ed. 3. Avowry 257. but is said, that a release amounts out of his fee, 14 H. 6 fol. 6. 37 H. 6 fol. Avowry 28.

Avowry for Fine of alienation of his Lands by custome, the plaintiff being a stranger pleaded unity of possession in the Lord time out of mind &c. and it was holden that when the Avowry is not made upon any person certain, or for a Change or Custome against common right, every stranger may plead in discharge of the tenant, 14 H. 4 fol. Avowry 602. agreeeth for Rent charge, 7 Ed. 4 fol. 24.

A stranger may well plead, that the tenant put in his beasts to be taken in distresse, or that he tendered 22 H. 6 fol. 3.

The Lord said, that T. & S. were jointenants, T. survives and upon avowed upon her, the plaintiff said that T. had nothing, but as wife to S. who enconced him, and that he had paid, and by that payment he compelled the



the Lord to avow upon himself as tenant, 41 *Ed. 3. fol. 26. Avowry 6*,  
and the disseisor shall compell the Lord to avow upon him, if he hath ac-  
cepted the services by his hands, 116 *Ed. 3. Avowry 9*.

5 E. 4. 3.  
7 E. 4. 28.

But if the Disseisee be plaintiff in a Replevin, the Lord may not avow upon the Disseisor, and he who recovers may compell the Lord to avow upon him 48 *Ed. 3. fol. 9. Avowry* 83. and it is there said, that the issue in tail may compell the Lord to avow upon him, not upon the discontinuée if he be plaintiff: so the heir of the feoffee of my Tenant without notice, 2 *Ed. 4. fol. 6.* so of a recovery, 41 *Ed. 3. fol. 26.* 37 *H. 6. fol. 33.* of tail, 33 *Ed. 3. Avowry* 255. &c.

The feoffee may compell the Lord to avow upon him after the death of the feoffor 34 H.6. fol.46.

In every case where the Tenant is in by course of Law, he may compell the Lord to avow upon him without notice, as where the heir of the disseisor is in by descent, and he be plaintiff. So of Tenant in Dower by the courtesie &c. 37 H. 6. fol. 35. 41 Ed. 3. fol. 26. 34 H. 6. fol. 47. 20 H. 6. fol. 10 33 Ed. 3. *Avowry* 255. 7 Ed. 4. fol. 26. 48 Ed. 3 fol. 9.

If the Lord avow upon a stranger, the plaintiff may well say, that he upon whom &c. enfeoffed him, and so may compell the Lord to avow upon himself, but not where the feoffee himself is not plaintiff, 41 *Ed. 3. fol. 26. Avowry* 79. and here the plaintiff may say over, that of parcell of the services he is not seised, but then he ought to alledge tender of the residue, and notice before, 31 *Ed. 3. Avowry* 111.

But if the Plaintiff cannot convey from him upon whom the Avowry is made, he hath no remedy, nor the stranger upon whom &c. nor shall come upon him in aid, 3 H 6. fol. 49. 34 Hen. 6. fol. 46. 1 Hen. 4. fol.

*Avowry* 193. 19 H.8. fol. 7. & 1 H.4. the Plaintiff conveyed from him upon whom the Avowry was made, and alledged the tenure by lesse service &c. and if after the statute the Tenant maketh a Lease for years, and the Lord avow for more services then he ought, the Lessee shewing it shall have aid, otherwise not, 34 H.6. fol. 46.

But before the Statute of *Quia emptores*, if the Lord avowed upon a stranger, the plaintiff should have no remedy, but the Mesne upon whom &c. might well have joyned with him, but there it was held, that if the Lord had avowed upon the Mesne Paramount, he should not joyn but with all the Mesnes and *paravaile*, 12 Ed. 4. fol. 11. 13 Ed. 4. fol. 6. 15 Ed. 3. *Aide* 33. 4 Ed. 3. *Avowry* 164.

The Lord avowed upon *7<sup>ane</sup>* as issue in Tail, the plaintiff said that *7.* had a sister *S.* Judgement of the Avowry upon her alone, and could not have the Plea, because a stranger, but if he convey the moyety by the feoffment of *S.* it is a good plea, and shall compell the Lord to avow upon him, but note that he conveyed from her as tenant in fee, otherwise he should not have compelled the Lord to avow upon him. *18 Ed. 3. fol. 10. Avowry. 98.*

...and that the past period, and by that payment he completed

A stranger to an Avowry may say that the beasts escaped there, and were not levant and couchant, or manuring, 18 Ed. 2. Avowry 219.

The Avowry upon a stranger, the Plaintiffe may not say, that the stranger holdes not of him, but hee shall say, that the Land is not holden of him so, but of his fee, 37 H. 6. fol. Avowry 28.

The death of the Prayee in aid shall not abate the Avowry, 21 H. 6. fol. Avowry 45.

XVIII. Where notice is materiall for making Avowry, and what notice is sufficient, and where it needs not.

**I**F my very Tenant alieneth, and dieth before notice, I may not avow upon his heir, for the alienee is my Tenant, but if he had been a disseisee &c. I might have avowed upon his heir, 2 Ed. 4. fol. 6 Avowry 31. 34 H. 6. fol. 51. and if the Feoffee of my Tenant dieth, I may avow upon his heir without notice, 4 H. 6. fol. 20. for if the Feoffor dieth, be attainted or Cess. I shall not have the Wardship, Escheat, nor Cessavit, 17 Ed. 3. fol. 64. Relief, 3. 34 H. 6. fol. 51.

But if the Tenant alieneth the whole or part in his life time, I shall not change the Avowry without notice, yet the Statute willeth, that he shall be attendant to the Lord, *pro particula*, 8 Ed. 4. fol. Avowry 35.

Two joint feoffees, the Lord takes notice of the Tenancy of the one, and needs not give notice of the other, 8 Ed. 3. fol. Avowry 36. 10 H. 6. fol. 32.

Avowry upon the Plaintiff, because he holds six Cottages and 30 acres of Land, who saith, that at the time of the taking one T. was Tenant of part. *Wich*, before notice the Lord may avow upon the Feoffor for the whole &c. *Finch contra*, where the Feoffor is plaintiff, the Avowry shall not be upon him, but onely for his portion &c. but if the Feoffee be plaintiff, the Lord may avow upon the Feoffor for the whole untill notice &c. but not distrain the Feoffor, but for his portion, and the Feoffee shall give notice, not the feoffor, 47 Ed. 3. fol. 4. Avowry 82. *Vide Divis* 27. 41 Ed. 3. *Finch* said, if the Lord hath accepted services of the discontinuee, or disseisor, yet if the Tenant in right be plaintiff, he shall avow upon him, 48 Ed. 3. fol. 9. & 10.

If tenant make a Feoffment of part, the Lord before notice may distrain in every part for all the arrearages before due, and after, and if the service be entire, he shall avow upon the Feoffee for the



the whole in a Replevin brought by him, for it cannot be severed, but see that the services due before the Feoffment may be severed from services after, although entire. *Quare* what difference between services entire, and severall to this intent, 22 Ed. 4. fol. 36.

If the tenant alieneth by Fine, yet the Lord shall not alter his Avowry untill notice, and the arrrearages tendred, 2 R. 2. Avowry 85. But the Lord may not avow upon the Feoffor for Homage due before, yet the feoffee shall not recover damages, because the taking was lawfull untill notice, 2 R. 2. Avowry 85. vide *Divis.* 12.

If the tenant alieneth in tail, the Donee payeth the services to the Lord, and dies, yet the Lord shall not have the Wardship nor avow upon the issue: but the Donor &c. and if the Tenant aliene by Fine, and taketh it back in tail, and dieth, the Lord shall not avow upon the Issue in tail, although there were no notice, and his father right tenant &c. but now he in reversion is tenant to the Lord, and there it is said, that the Fine defeats the privity without notice, 2 Ed. 3. fol. Avowry 176. 2 Ed. 4. fol. 6. 4 H. 6. fol. 20. in the Kings case he shall choose his tenant &c.

The Donor shall not be compelled to avow upon the discontinuance, no notice given nor tendered, otherwise it seemeth if he hath accepted his services, 2 Ed. 2. Avowry 181. 20 Ed. 6. fol. 9 & 10. that may, but is not compellable &c. nor by discent to him, 41 Ed. 3. fol. 26. Avowry 65.

Tenant in tail, where the remainder is over in fee discontinueth, the Lord need not to avow upon the discontinuance by any notice, and after the death of the Donee he shall avow upon his Issue &c. 20 H. 6. fol. 10. and he shall not be compelled to avow upon the Feoffee, if he averre not that the Feoffor had the Fee, 8 Ed. 4. fol. Avowry 36. 18 Ed. 3. fol. Avowry 98. 7 Ed. 4. fol. 26. agrees. *Heydon contra* 5 Ed. 4. fol. 3.

Where Guardian of the heir of the Donor, avowed upon the discontinuance, it was held that the Avowry should abate, for the heir is not compellable to avow upon him, and it may be prejudiciall unto him, although he may avow upon him &c. 48 Ed. 3. fol. 9. Avowry 83.

By the death of the Disseisor the Avowry is changed without notice, but not so by the death of the disseisee, 2 Ed. 4. fol. 6. 37 H. 6. fol. 35. 4 H. 6. fol. 20. But if the disseisee recover against the heir of the disseisor, the Avowry is changed again, 37 H. 6. fol. 35.

And upon which tender of the Feoffee, the Lord hath need to take notice, See 20 Ed. 3. Avowry 125. But if the Lord accept of the services by the hand of the Feoffee, or accept him for his Tenant, he shall not distrain afterwards for the services due before the Feoffment, otherwise it is of a forejudger, for there he is compellable to accept the Tenant in place of the Mesne, and he shall pay all arrrearages &c. 7 Ed. 3. fol. Avowry 145.

If my Tenant enfeoffe a stranger, who dieth, and I accept the Heire for my Tenant, yet I may avow for Arrearages due before; because he is compellable &c. but where there is no need to avow upon him &c. the Arrearages due before are lost by such acceptance, 4 Ed. 3.

*Avowry* 163. 7 Ed. 4. fol. 26.

If the Tenant enfeoff his son being of full age, and dieth, the Lord may avow upon him, as feoffee without notice, and shall not have reliefe, for a discent is notice in Law, 17 Ed. 3. fol. 64. *Relief* 3. 2 Ed. 3. fol. *Relief* 11. 4 Ed. 3. *Avowry* 163. &c.

The manner of notice is to tender the arrearages at the time of the distress upon the Land, and if he know not the certainty of them, he may tender a sum, and be ready to pay, if more &c. 45 Ed. 3. fol.

*Avowry* 80.

XX. Where the Avowant may alter the Avowry, and that after exception of the party.

**T**He Avowant conveys the Tenancy to the Plaintiff, who pleads jointenancy with his Wife &c. The Avowant saith, that notice was not given, and it was held, that it needed not, because he hath taken notice of one, and now he may change the Avowry upon both: and if they plead jointenancy with a third person, he may change again upon them all three & sic infinite 8 Ed. 4. fol. *Avowry* 36. 7 Ed. 4. fol. 26.

The Defendant avowes upon the Plaintiff as his very Tenant, if he sheweth that the Defendant had but an Estate for life in the Signiory &c. the Defendant may change the Avowry, but it was by sufferance of the Plaintiff, 4 Ed. 3. fol. *Avowry* 162.

It was held, that after Avowry made, the Defendant may not change it, but *ex gratia curie*, and therefore where he hath made a joynt Avowry, and changed it in severall Avowries, he would have it changed again, because it was an excessive distress for one part, & non potuit 29 Ed. 3. fol.

*Avowry* 250 and it was at another time,

The Plaintiff traversed the Avowry, the Avowant said, that he was ill informed of the matter, and prayed to be received to make a new Avowry, at another time after, and the Attorney of the Plaintiff would not assent, for he said, he had no such Warrant, H. 33. Ed. 3. *Avowry* 255.



XXI. *How Avowry shall be for charges of Knights of the Parliament, or for any thing which shall be levied of any Town or Commonalty.*

**A**vowry that they of a Town used to assesse a certain summe for reparation of their Church, &c. and the Plaintiff was assessed by his own assent to 10 s. and it was held that the usage shall not bind him that assented not, because it is against Common Right: So of an assessment, that none of the Town shall occupy his Common untill such a time, because a private Commodity; but the Custome by which neighbours assesse, &c. for making or repaying of a bridge, the walls of the Sea, or the like, it shall bind others without their assent, because it is for the Common weale by *Finch*, 44 *Ed.* 3. fol. 19 *Avowry* 72. but these Laws shall not bind any stranger, 21 *H.* 7. fol. 40. But the absence of one resiant in a Leet, or of one Commoner in a Town, shall not defeat an order which is made by the common assent, 8 *Ed.* 2. *Assise* 413.

A *Scire facias* comes to the Sheriff to levy the expences of the Knights, &c. he may distrain the goods of any in the Town, for the whole Town, if he take them within the Town, because it concerneth the King, but it is a good plea that this Town hath not used to pay, &c. time out of mind, &c. 11 *H.* 4. fol. 2. *Avowry* 52. 8 *R.* 2. *Avowry* 260. agreeing to 13 *H.* 4. But there it is sayd, That it is the fault of the Town if they will not assemble before, and assesse every man &c. if process or commission come to levy, &c. *Avowry* 156. and the Bayliff may justifie without the Sheriffs Warrant, and without shewing what was done in the Parliament, 8 *R.* 2. *Avowry*. 260.

And note, That this Writ is, *Levari & appreciari facias*, So that he may sell the Distresse, and deliver the money to the Knights, 10 *H.* 4. fol.

*Gage Deliverance* 23.

It is sayd, That the Lands of Lords which are ancient Baronies, are not charged to the expences; but Lands purchased by the Baron stand charged as before: Also it seemeth, If another man purchaseth the Land of an ancient Barony, that it shall be charged in his hand, *Quere*, 11 *H.* 4. fol. 2. *Avowry* 52.

A Copy-holder shall also pay to the expences of Knights, *Quere* if the Lord himself be a Baron or Knight of the Parliament, 10 *H.* 4. fol. *Gage Deliverance* 23. *Avowry* upon a Town or Commonalty.

XXII. Avowry for Amerciament or suit in a Leet, Hundred, Sheriffes turn or other Court.

**A** Lord of a Hundred, who hath used to have a Law day and Leet, and dozers to present there, may amerce them for not appearing, and distrain for the amerciament, the beasts of the party in any place within the precinct &c. 11 H.4. fol. Avowry 57. vi. C. 11. part in Godfries Case.

Avowry for suit to a hundred, from three weeks to three weeks, time out of mind &c. and layes the seisin by the hand of a Tenant of the Land and house, it is no answer for the plaintiff to say, that the Land and house were in divers hands, unlesse he alledgeth that both or the one, *scil.* the Land is not charged of the suit, and then, it is no plea without traversing the seisin alledged in *A.* or shewing, that the suit was for the house *per Treu*, but if the Avowry were for suit service, it is sufficient to alledge a severall tenure to abate the Avowry, but it seems the plea is good to avoid the Avowry, for he hath destroyed the seisin by speciall matter, and *ex assensu* issue was taken upon the seisin by the hands of the Tenants of the house and Lands, 11 Ed. 3. Avowry 101.

It hath been said, that suit to a Hundred is no service, 13 Ed. 3. Avowry 120. and therefore in the Case before 11 Ed. 3. he may not lay the seisin by the hands of *A.* as by the hands of his Tenant, whereas agrees 7 Ed. 3. and there he layed the seisin in *S.* and his ancestors, who enfeofed the plaintiff, and speaks not of the Estate of *S.* but it is good, and it shall be intended to be fee, Avowry 144. but a suit to a Hundred may be a service, *per Fitzh. fol* 137. 4 Ed. 3. fol. 42. Mesne 42. Vide Fitz. N.B. 137. d. 4 E. 34. 11 b. suit 18. A man may have a writ of Mesne to acquit him of suit to a Hundred.

A Bailiff of a Court Baron may avow a distresse taken for the default of the plaintiff to the attachment in a plaint of trespassse against him &c. and the issue was if the distresse were for malice and procurement, and note, that he may avow by commandement of the Steward, M. 41 Ed. 3. fol. Avowry 78.

If it be presented that one came not to the Leet, the amerciament shall be offered by the dozers who presented it, and then he may avow, 48 Ed. 3. fol. Avowry 80. Ci. 11. part Godfries case acc.

One was amerced for brewing Ale, and selling it contrary to the assise within the Hundred, and it was holden, that although he were resiant within another Leet, yet the amerciament is good where it is made &c. So if one sell bread and Ale contrary to the assise in my market being in another Leet, then where he brewed it, and wherefore he traversed the brewing and selling it contrary to the assise, 13 Ed. 3. Avowry 105.

If the King grant me a Leet of all the Resiants for life or otherwise, and after he grants unto another a view, and Leet of any of my Resiants, the Tenants are not bound to come to his Leet, and though he be seised of their suit &c. yet they shall avoid it in Avowry by the speciall matter, for



he could not have a *Quo warranto*, and I may well distrain them for their suit, and need not sue a *scire facias* to repeal the other patent; so at their perill &c. by which it appears that they are not bound to come to two Leets, 32 *Ed. 3. Avowry* 112. But see that seisin binds in the Resiants in Avowry if they ought of right to come to another Leet, 10 *Ed. 3. fol. 8. Avowry* 155. & 4 *Ed. 3. fol. 31.* it is held, that seisin of them shall bind in the one Case and the other, *vide Fitzh. fol. 161.* that none is bound to come to another Leet, but onely there where he is Resiant, but shall have an *exoneraco. Secta.*

A Felon waves the goods within the Leet of him, who hath *Catalla felonum & fugitorum*, the owner brings a Replevin, the Lord will avow, 8 *Ed. 3. fol. Avowry* 151. 29 *Ed. 3. Avowry* 255.

C. 11 part God-freys case.

4 *Eliz. Dy. 211.*

H.

The Jurors in a Leet refuse to

present the Articles, the stipend

may impose a Fine upon them

severally, but

a Fine imposed upon them jointly is not good.

Doseners amerced in common in a Hundred for not presenting &c. It shall be assised severally according to the quantity &c. and the Lord may well avow, but if a town be amerced intire, the assisement shall be also in common, because none is named that is amerced there, but the town &c. 10 *Ed. 3. fol. Avowry* 155.

Where two Lords have two Leets in one Town, if if the one make a Purpessure in the way in a place which is all within the Leet of the other, he may amerce him, and avow, but not if the place where &c. be in common to them, &c. 4 *Ed. fol. 10. Avowry* 161.

And there it is said, that if my tenant resiant within my Leet, purchaseth a Leet of all his Tenants, yet he shall come to my Leet, not if he were but resiant, and not tenant, by some. So if he hath a Leet by Prescription to his Mannor: The opinion of the book is otherwise of a resiant which is not a Tenant and purchaseth part of the Mannor &c. if he be not also Lord of the other Mannor, 4 *Ed. 3. fol. 10. Avowry* 161, but he that hath used to go to another Leet time out of mind &c. is not bound by his resiancy, 13 *Ed. 3. Leet. 7. Quare*, if he who hath used time out of mind &c. to come to two Leets, shall be bound &c. and it is held that he shall, 4 *Ed. 3. fol. 31.*

A man may serve at a Leet, and also at the Sheriffes turn, not at two Leets, 18 *H. 6. fol. 13.*

Avowry by the Lord of a Hundred for two Marks yearly of the Hundreders, used to be levied by distresse time out of mind, of the chief Donsor, who distrained the others for contribution, 6 *Ed. 3. fol. Avowry* 191.

A Feoffee who holds by 1 d. for all services and demands, yet he shall serve at the Leet of his feoffor in the same town, for this is to the person and reall, not service, *M. 7. Ed. 2. Avowry* 211. but if it were also for all suits &c. he shall be discharged &c. *P. 8 Ed. 2. Avowry* 212. *Vide* a feoffment to hold by 6 d. for all services, & ex eo solvat *scutagium* 31 *Ass. P. 39.*

One claims by Prescription to have amerciaments of all his Tenants,





another of the whole Mannor, rendring 10 l. for the Mannor and 5 l. for moulture, this is one rent, and one intre avowry shall be, 9 *Aff. P.* 24. *Avowry* 176. 9 *Ed.* 3. *hors de son fee*, vide of a Lease of wood and Land rendring 10 s. for the Wood, and 10 s. for the Land, 17 *lib. Aff. P.* 10.

*Herle* said, that *Seffa ad molendinum* lieth not without tenure, nor of the corn growing out of the Land to be spent in it, and in an assise brought the house shall not be put in view, because it is not parcell nor appendant, 19 *Ed.* 2. *Affise* 390. but of the Corn growing within the Land, Signiory or Town, the Writ lieth without a tenure, not of corn bought, 29 *Ed.* 3. *Aff.* 365. and it lieth by prescription alone, or by tenure, 22 *H.* 6. fol. *Action upon the Case* 11. and *Herle* said, if the Lord sell his will with the suit of his neighbours and Tenants, and the vendee is seised of their suit, the vendor dieth, and his heir made another will, and had the suit again, 19 *Ed.* 2. *Aff.* 399. Suit appendant passeth with the will to which &c. 17 *Ed.* 3. fol. *Hors de son fee* 22. vide *Divis.* 33.

Two Lordships in one Town, the one hath had a Mill time out of mind &c. and suit of all the Resiants &c. yet the other, or any man may build a Mill thereupon his own Land, and no remedy for the first against the new Miller for taking away the suit of his Tenants, but he hath remedy against the Tenants by *Seffa ad molendinum* or distresse; and note, that Resiancy doth not give suit to a Mill without Tenure or Prescription, 22 *H.* 6. fol. 14. *Action upon the Case* 11.

The Defendant after the view pleaded *hors de son fee*, Judgement, if without title, and good, because it is against common right, but if he claim it as appendant, he shall not make other Title, but he may, if he claim in grosse, 17 *Ed.* 3. fol. *hors de son fee* 22.

Ecoffee to hold by 2 s. for all services, he shall not do suit to the Mill, yet it is not service, because the Statute willeth, that nothing shall be demanded, which is not contained in the deed, 18 *Ed.* 2. *Double Plea* 11. vide *P.* 8. *Ed.* 2. *Avowry* 212. *Divis.* 22. G.

In this Writ of *Seffa ad molendinum* in *debet* and *folet* after view and title made, the Tenant Lessee for life, had aid of him in Reversion, 17 *Ed.* 3. fol. *Counterplea of aid* 3.

In suit &c. in *debet*, he layed the seisin *ut de feodo & jure*, *Ed.* 1. *Avowry* 296. and it was *de bladis crescentibus*.

**XXIV. Avowry for aid to make his sonne Knight or to marry his daughter.**

**A**id to make the King's son Knight, or to marry his eldest daughter, Tenant by Grand Serjeanty shall not pay, nor none but Tenants

in Knights service and Soccage, for the Statute speaks of them onely, and petty Serjeanty shall not pay it, 1 H.4. fol. 32. Bar 181. 10 H. 6. fol. ancient demesne.

It seems that the daughter ought to be past 15 years of age, before Avowry for this aid, and a Release of all services and demands extinguisheth this aid, because it is a service, 40 Ed.3. fol. 22. & 47. as Pigot reporteth. But the books seem that they are not extinct, if there be any part of the first tenure remaining, because they are not services, but incident to Socage and Knights service &c. Lege.

It seems the aid shall be granted onely for the marriage of the eldest daughter, a Count in debt against the heir, and if the father hath levied the aid, and die before the marriage, she shall have action of debt against the Executor, and upon their not sufficiency against the heir, and it is a good Barre that it was not levied in the life time of his father, 3 Ed.3. *Itin. debt* 157. *Fitzb.* agrees, that it shall be for the eldest son or daughter, and the Son shall be fifteen years of age, and the daughter of seven per *West* 1 Ca. 35. *Fitz.* fol. 122. & fol. 82. and there is a Writ to the Sheriff to levy it for the Lord, and he that holdeth by one Knights fee shall pay 20s. and so *pro rata*, and he that holds in Socage to the value of 20s. shall pay 20s. *West* 1. cap. 35. So for the King, Anno 25 Ed. 3. c. 10. Before which Statute the King distrained for what sum he would, and aid shall be for the younger son or daughter, if the elder dieth before &c. So it is sufficient if that he be heir apparent, though the Statute speak de *primogenito*.

And *Fitzb.* saith, if the daughter be married, and the son made Knight after the summe levied, and before payment made to them by the father, they have not any action of debt against the Executor, nor against the heir, which he shall if he be not married &c. fol. 83. 3 Ed.3. B.

*If a man hold by homage fealty and rent, and release the fealty it seems void, and so of aid, because it is incident.*

*Vide 7 E.4. 11. 12 E.4 3.6. 32 b.6 35. to this.*

*Fitz. N.B. 821 G. acc.*

*Vide Com. 262. Ratliffes case. C.6 part Sr. Druce Druvies Case acc.*

XXV. Avowry for excessive distresses, and what shall be said to be an excessive distresse, per Marleburge cap. 9.

A Man avowed the taking of 60 sheep for 2s. rent, and of 15 oxen for 10s. rent, and he was amerced for the excessive distresse, but the Avowry abated not, 41 Ed. 3 fol. Avowry 65. Distresse 13. and of six sheep for 3 d. and for the excessive distresse recovered damages presently, 11 R.2. Avowry 87.

Avowry for Homage, the plaintiff said, that he held by fealty onely, and as to the Homage that he had seisin by excessive distresses during his nonage &c. the other said, that it is holden by Homage, and as to the excessive distress for homage demurred in Law, *Finch* 42 Ed. 3 f. 16. Avowry 67. Avowry good upon a distresse taken in the high way, as for beasts of the Plow, & the other was put to his action upon the Statute, 11 R.2. Avowry 87. 4 H.6. fol. 2.

The.



The taking of ten sheep for one pair of gloves is excessive, but for homage or fealty he may avow the taking of twenty sheep, because for them it cannot be excessive, 29 *Ed. 3. fol. Avowry 250. 27 lib. Ass. P. 51.* *Quare* of suit and escuage, and it seems there it may be excessive, and often distraining, nont of homage, *vide* if it be clear for fealty, 28 *lib. Ass. P. 50.*

*Vide Br. Distresse 88*  
21 *E. 4 50 acc.*

A Cart with four horses loaden with grain taken for 2 s. is excessive, but if it appear that he could not sever them, (as one fold of sheep which will not be severed) as if the horses were tied to the Cart, it seems by *Bryan* that it is not excessive Distresse, *Ed. 4. fol. 3.*

XXVI. Where Avowry may be for Contribution upon Tenant in Dower, of Coparceners or other, and where and how contribution may be made or demanded, *Marlebr. cap. 9.*

**T**enant in tail dieth without issue, his wife recovers Dower against the donor, and distrains him for the third part of the services, and good, 10 *Ed. 3. fol. Avowry 159. 3 Ed. 3. fol. Avowry 173. 34 lib. Ass. P. 15. 44 Ed. 3. fol. 32.* So when the Tenancy escheats &c. But if the Lord purchaseth the Tenancy, no Contribution shall be made 23 *Ed. 3. Dower 130. Perkins fol. 83.* And by him there the wife shall not be attendant to the heir to whom the Mesne hath released, because in of the Lord by the purchase.

If the Father holdeth of the Son and dieth, and he endoweth his mother, yet he may distrain for the third part of the services &c. 34 *l. Ass. P. 15.*

If the Mesne holdeth by 3 d. and the Tenant of him by 3 s. and the Tenant forejudgeth the Mesne, yet his wife shall be endowed of the Mesnalty, and shall not be attendant to any, *Perkins fol. 84. but vide 22 Ed. 3 fol.* that she shall be attendant to the Tenant *paravail &c.*

If the Lord prescribes to have two Marcks of the Resiants, and to distrain the chief dosoner, he may distrain the other for Contribution, and good, 6 *Ed. 3. fol. Avowry 191. &c.*

One brings a *Contribuac. fac.* as a parcener, the Defendant said, that his Father died seised, and held without Contribution, and prayed his age and had it not, 4 *Ed. 2. Age 136.*

If Land out of which suit is due descend to divers parceners, the eldest onely shall do the suit, and the others shall contribute, but if the Lord purchase part of the Land out of which the suit is &c. all the Suit is gone, as Grantee of a Rent charge or Tenant by Statute purchaseth, parteth, *Watson* alledgeth the reason, because Contribution lieth not against himself who purchaseth &c. 34 *lib. Ass. P. 15.*

The Lord brought a *Sess. fac.* to a Hundred, against two parceners, who said, that they had another sister within age, not named, and prayed that

that the Plea might be stayed: The plaintiff shewed that Partition was made between them, so that every one shall do suit and other services for her self, this was holden a good plea, wherefore he traversed the tenure by suit, 24 H. 3. Partition 19.

If the eldest daughter doth the services to the Lord, she shall have contribution of the younger parceners, 10 H. 4. Droit 64.

XXVII. When and how Homage and Fealty shall be done, and who shall be compelled to take it.

OF the manner of doing Homage by Husband and Wife, See *Littleton* Vide C. 6. part 57. Homage done by the husband before issue shall not bind the wife. 43 E. 3. 19. Avowry upon husband and wife for homage after issue. 2 Ed. 2. Avowry 183. &c. Ed. 3. Avowry 109. and it is said, that the Husband and Wife shall doe Fealty, but the Husband onely shall do Homage, for she shall not go to the war with her Lord, 13 Ed. 1. Avowry 234. but see that they both do Homage jointly to the King, 46 Ed. 3. fol. 111. *Estoppel* 205. *Littleton* saith in his chapter of Homage, that Tenant by the Courtesie shall not do homage.

The Lord in right of his Wife shall not take Homage without his wife, 2 Ed. 2. Avowry 183. &c.

Fealty due to two parceners may well be done to the one of them, and therefore it is no plea for the Tenant where the one demands it, to say that he will do it to them all together, and this may be done to the Bailiff or Attorney, and the Tenant ought at all times to be ready upon demand, 3 Ed. 2. Avowry 287.

But if Homage be due to three parceners, the taking thereof, and the profit shall be to all in common, 12 Ed. 3. Avowry 236.

In Avowry for Homage it is not sufficient to be ready in the Court, if he were not ready in the countrey, for then the Lord shall have return, but in Customes and services Homage may be well done in Court, 7 Ed. 3. fol. 146. but fealty hath been in Court in Avowry, 3 Ed. 2. Avowry 187.

If the Tenant do tender homage before distresse taken, the Lord shall not distrein again without new request 20 Ed. 3. Avowry 123. so of Fealty, 21 Ed. 4. Avowry 42. See *Divis.* 2.

If Land holden by Homage discend to many parceners, and the one purchaseth the Seigniorie, now the Homage is gone, for she also ought to do it, and she is discharged thereby &c. but for other several services she may avow for the portion, 8 Ed. 3. fol. 65. Avowry 152.

If three parceners hold by homage, it being done by the eldest, it shall serve for all, but if after she alieneth her part to a stranger, the others shall do another homage, for the first is determined, 2 Ed. 2. Avowry, 179. *Stamford Prerogative* cap 5.

Tenant for life shall not have Homage nor do Homage, 3 Ed. 3. *Itin.* Avowry.



*Avowry* 175. otherwise it is of Fealty 22 *Ed. 3. fol. 18. Wards* 44. and though he did homage, he shall not have it by a writ of the Mesne, for his estate is not amended, 13 *Ed. 3. Mesne* 12.

A Parson shall not have homage, but a Bishop shall have it, *Ed. 1. Juris utrum* 13.

An Avowry upon the Feoffor is not good in a Replevin by the Feoffee, who was also Tenant at the time of the taking, 41 *Ed. 3. Avowry* 79. but he shall not render damages where he had not notice, 2 *R. 2. Avowry* 85.

The Tenant who hath done homage to the Grantor, shall not do it to his Grantee, but fealty &c. he shall do, and homage after the death of the Grantor, but this seemeth to be homage ancestrell, for there it is said, that the Tenant shall be warranted, for it cannot be homage ancestrell to the Grantee, 13 *Ed. 1. Warranty* 91. and *per qua servitia* 23. where it said, that Tenant by homage ancestrell need not attorn untill acquitall be granted unto him &c. *Homagio capiendo*, of Homage ancestrell, the Lord said, that before the Writ he hath granted the Lordship to T. and held a good plea, 47 *H. 3. Warranty* 99. and this Writ lieth not but for Homage ancestrell, which draweth warranty and acquitall 45 *Ed. 3. Barre* 212.

Co. E. 3 per  
qua servitia  
24 br. fealty  
19. an Infant  
did fealty.

An Infant which holdeth by Homage alieneth, the Grantee of the Seigniorie brings *per qua servitia* against both, and moves that both may do Homage, and at last it was holden that the feoffor onely should do fealty, and no more, because also within age, *scil.* of three years, 32 *Ed. 3. per qua servitia* 9.

Lands holden by Escuage was rendred by Fine for life, the remainder to T. to hold by Escuage, it was holden that Tenant for life shall not do one Escuage and T. another, because one Tenant, so they shall not do severall services, as the one Socage, the other Knights service, and see the Fine recited, that tenant for life should do Escuage, and yet he shall not do Homage &c. 19 *Ed. 3. Fines* 71.

## XXVIII. Where acceptance of Homage may be a Barre.

Vide 14. A. 8.  
br. Affise 192.  
Plo. Com. 133.  
33 E. 3. Gard.  
11 acc.  
F. N. B. 142.

**T**He Tenant enfeoffeth his eldest son by Collusion, and the Lord doth accept homage of him, the father dieth, the son shall not be in ward, nor no advantage to the Lord of the Collusion 32 *Ed. 3. Wards*. See the contrary, 33 *H. 6. fol. 16.* because he was compelled to accept the homage living the feoffor, so he is not estopped, but shall be estopped by acceptance after his death, but *vide* it said *contra* to this, 31 *Ed. 1. Wards* 155. because by *Magna Charta* he shall not have the Wardship, untill he hath accepted his homage.

If the disseisee accept homage of the disseisor, it is a Barre of his Ass. but his heir may have a Writ of Entry, 17 Ed. 3. fol. 6. 22 lib. Ass. P. 6. 17 Ass. P. 3. Ass. 208 Temp. Ed. 1. Ass. 423.

If the Lord accept homage of the heir, he shall not avow after for relief, 15 Ed. 3. relief 5.

If a man hath three daughters, and the middle daughter doth purchase Land, and doth homage to her eldest brother, who hath the Seigniorie, and dieth without issue, the youngest son shall have the Land, and not the elder for the acceptance, but if the younger die without heir, he shall have it an escheat, and note that the acceptance concludeth himself, not his heir 13 Ed. 1. Avowry 235. Bracton agreeth, *Homagium expellit dominium* Stamford prerogative cap.

An Abbot demanded certain Land, whereof the Tenant disseised his predecessor, it shall not be a barre by acceptance of fealty, yet it shall be a barre in a *Juris utrum*, 12 Ed. 3. Bar 252. vide accordingly, but not for the successor, 11 Ed. 3.

*Juris utrum* 3. but the person himself was barred by acceptance of the Bailiffe, 12 Ed. 2. *Juris utrum* 12.

If the Son be attainted living, the Father who afterwards dieth, and the Lord brings a Writ of Escheat, it shall be a good bar, if he hath accepted his fealty after the death of his father, 31 Ed. 1. Discent 17. but 11 Ed. 3. Escheat 13. is, that no acceptance of service shall barre the Lord of his Escheat, if he have not accepted homage &c.

A woman barred of Dower by acceptance of homage, of Land purchased by her husband, and her self jointly in tail, 11 Ed. 3. Dower 63.

It was found by the Grand assise in a Writ of right, that the demandant had accepted homage of the Tenant for the same Land, whereupon it was awarded that he, and his heirs should be barred in perpetuum, 5 H. 3. Right 66.

A *Juris utrum* abated by fealty accepted depending it, Ed. 1. *Juris utrum* 13. and there it was said that acceptance of fealty is as strong a bar as of homage, by any who hath such estate, for that he cannot have homage as a Parson &c. and if a Bishop bring a *sine ascensu capituli*, acceptance of fealty shall bar him, yet he may have Homage, *Juris utrum* 13.

If the Donor hath been seised of homage, by the hands of the Tenant in Frank Marriage, he shall have Customes and Services for it afterwards against him, 47 H. 3. Right 52. Quare Fitzh. agreeth, fol. 151.

If the Lord accept homage of the disseisor, yet he may have a Writ of Escheat Contr. if he accept of a personal service.

4 E. 3. 47 E. 3. 4. 29. 29 h. 8 b. Avowry 111. by acceptance of Rent and services by the hands of the Feoffee, the Lord shall not barred of relief.

Note the reason is because it is the highest service that he can receive for he cannot receive homage us de E. 1. Jurisdiction 13. But see 11 R. 2. Acceptation of Fealty is no bar in a Writ of Escheat by the Lord.

Vide 7 E. 6. br. escheat 18. If the Lord accept rent of the Disseisor, yet he may have a Writ of Escheat Contr. if he accept of a personal service.



XXIX. What Escuage shall be said Knights Service, and what not.

**E**scuage certain is Socage, and if uncertain, sometimes more or lesse &c. is Knights service, otherwise not, 15 Ed.2. *Avowry* 215.

*Vide Lit. acc.*  
15 E.3. *Avowry*  
acc.  
26. *Aff. br. Tenures* 28.

A Tenure to pay a farthing or spurres, when escuage shall rise to 40 s. is not escuage, for it is not due if escuage rise not to 4 s. and Knights service it cannot be, because certain, 26 lib. *Aff. P.* 66.

Feoffment to hold by six pence for all services and escuage is socage, and a feoffment to hold by 6 d. for all services, & *ex illis quod solum debet scutagium quantum pertinet*, &c. is socage, but if he had said further, *salvo forinseco servitio* or *salvo regali escuagio*, when it riseth to 40 s. and when to more more, and when to lesse lesse, this is Knights service, because Knights service is expressed 31 lib. *Aff. P.* 39. and 27 lib. *Aff. p.* 52.

Escuage is a service of arms between England and Scotland, and Castleguard, is Knights service, although it be within the Realm and it is escuage, so is grand Serjeanty, 19 Ri.2. *Wards* 165. *Plowd. Com.* 126. b. it shall be paid when the King goes into Wales, see old *Tenures acc.* 116. see *Doderidge* in his book of the Principality of Wales. The Kings of England to suppress the disorders and rebellions of the Welshmen invented *Scutagium*, which was to levy aid of their subjects *per Servitia Militare*, to suppress them *tanquam rebelles, non hostes*. Note, upon that book it may be collected that every man who holds of the King by his service, is bound to go to war with the King or his Lieutenant, against the Scots or Welsh, and so it was required 16 Car. by the King in his Warres against the Scots, and if the Scots rebell against the King of England, he being King of both Kingdomes, it seems by the opinion of *Littleton* 20. that they ought to go with the King by 40 dayes at their own charges, but to forreign war the subjects are not bound to go with the King, or to attend him without wages; but note *Egertons* book of *Post-nati*, 8. by Proclamation the 20th of October, 1604. 2. *Jacobi*, it is recited in *hec verba*. We have received by those skilfull in the Laws, that immediately upon our succession divers of our ancient Laws are expired, as namely that of escuage, and the Naturalization of Subjects.

Tenure by Rent, and 10 d. for escuage be it more or lesse, is socage in capite, and if the King lease Land holden of another by such services, he shall have an oustre le main *cum exitibus*, 5 Ed. 3. fol. 6. *Quare impedit* 34.

There is Lord Mesne and Tenant in Knights service, the Tenant goeth into Scotland with the King, by this the Mesne is discharged of escuage, and there it is said, that the Lord may drive a distresse out of the County for escuage, 6 H. 3. *Avowry* 242.

Of apporcionment of this service &c. vide *Littleton lib. 2. cap.*

and Herle said, that aman shall not pay escuage, nor shall go in arms for it, but where the King goes in his own person, and if he plead, that he went not with the King into Scotland, yet he shall maintain it by this that he served him elsewhere &c. 7 Ed.3.fol.29.

his Deputy then the Constable of the Host ought to certifie the same in the Chaucery, by the Treasurer or Barons of the Exchequer, and then the Kings Lieutenant shall have escuage of his Tenant.

21 E.4. 17. F. N.B.83. If the Kings Tenant goeth with the King or his Lieutenant or by the Treasurer

XXX. Tenure in Frankalmoigne how it may be done, and how it may be changed.

THE Lord paramount confirmeth to the Tenant to hold in frankalmoigne, the Mesne dieth without heir, the Lord grants the services to a stranger, the Grantee is estopped to avow for homage by the Confirmation &c. 31 Ed. 3. *Avowry* 244. if the Tenant grant to hold of the chief Lord, and the Lord confirms it to hold in Frankalmoigne, it is good, 4 Ed.3.fol.19. 3 Ed.2. *Mesne* 46. but see 5 Ed. 32. *Mesne* 64. where it seems that is not Frankalmoigne in the first case of the 31 Ed. &c. Frankalmoigne by confirmation to the Abbots Tenant befor the Statute of *Quia emptores terrarum*, 33 H.6 fol.22. 15. Ed.3. Confirmation 8. and the Writ de *Mesne* lieth between them thereupon, and if the services of Frankalmoigne be regardant to a Mannor, he which hath the Mannor shall have them also *ibidem*, and see where an honor of which the Mannor of *Spalding* was held in Frankalmoigne, was given to the King with all the advantages as the donor had it, and the King had also the Frankalmoigne, 7 Ed.4.f.11.

4 E 3 br. Tenures 60. Lord, Mesne and Tenant Abbot, if the Lord release the Abbot or confirm in Frankalmoigne, the Menalty is extinct.

The Templers held of the King in Frankalmoigne, and were dissolved by Parliament, and their Lands given to the Hospitlers of S. John to hold by the same services &c. the ancient Frankalmoigne is not revived, and a new one cannot be without expresse words, for they shall not do certain services &c. yet here is a Seigniorie, 35 H.6.fol.57. aid of the King, 28. 7 Ed.4.fol.11. 33 H.6.f.7.

In Coke 7. part 13. the reason of this Case is, because at the privacy of the tenure on the party of the Tenant doth not continue, and the privacy being a personal privacy, was not conveyed to the Hospitlers.

*Thorp* said, that Tenant in Frankalmoigne needs not to attorn, because he shall not hold of the Grantee by the same services, 42 lib. *Ass* p. 46. *Travers* 24.

A gift was before the Statute to hold in Frankalmoigne, reserving rent, and good, and a Writ of *Mesne* lieth for the rent, and thereof he shall be acquitted for owelty, so the Reservation takes away the Frankalmoigne, for if not, it should be acquitted without owelty &c. 4 Ed.4. fol 35. 30 Ed.3.fol.23. *Mesne* 40. agreeth, and there the Grant was *salvo feoffamento* &c. and it was no Frankalmoigne, but Knights service &c. but



13 H.4.f. it is said, that such reservation is good, for the Frankalmoigne, and is void for the residue, as a gift in Frankalmoigne reserving Rent, the rent is void, *Mesne* 47. *vide* it is not expresse to be void for the residue, and *vide* 13 Ed. 1. *Formedon* 63. rent well reserved upon reservation of Frankalmoigne, *Manwood* saith, that the rent rescued upon Frankalmoigne doth not stand, and to this of Frankalmoigne agreeth, 33 H.6.f.7.

*Stoufe* and *Thorp* hold that Frankalmoigne shall be assets in a *Formedon*, but cannot be extended nor aliened to a stranger, nor severed from the Donor and his heirs, 14 Ed.3. *Mesne* 7. and there it is said, if a Mannor whereof Frankalmoigne is part, be aliened or recovered, the Frankalmoigne remains, but if it escheat it is extinct, &c. an Abbot attorns to the Grantee of the Mannor, who confirms to him to hold in Frankalmoigne, yet void, because no tenure between them by attornment, 3 Ed. 3. *Mesne* 46.42 lib. *Aff. P. Travers* 24. But if the Tenant in Frankalmoigne make a Feoffment to hold of the Lord, the Feoffee shall hold by Fealty, 31 Ed.3. *Cess.* 22. *Skip.* held otherwise, and that he shall hold as he held over *ibidem*, but the other opinion was the better. The Tenant holds in Frankalmoigne, and if the Mesnalty doth escheat where the Mesne doth release to the Tenant, the Tenant shall hold of the Lord, as the Mesne, holds &c. not by Fealty onely, *Quare. Danby*, as it seemeth agreed not to this, 7 Ed.4.f.12.

### XXXI. Where Rent shall follow the nature of the Land.

**A** Seigniorie with service issuing out of Land in Gavel-kind descends to the heir at the Common Law; as Lord, Mesne and Tenant, the service of the Mesne is at the Common Law, but the service of the Tenant shall be of the nature of the Land, *Quare* 7 Ed.3.f. 38. *Avowry* 150. 4 Ed. 3.fol.53.21 H.6.fol.111.

But rent charge issuing out Land in ancient demesne or Gavel-kind shall be of the same nature, although it began after time of memory, 22 lib. *Aff. p.* 78. *Mort' d'ancestor* 26. & 4 Ed.3.f.32. It is said, That a woman shall not have dower of the moyety of the Rent beginning since memory, where she might have the Land whereof &c. by the Custome; so of Common, but afterwards it was held, that in both Cases they shall follow the nature of the Land, and ancient demesne abated a Writ brought of the like rent; and rent services reserved upon a Feoffment of Land of ancient demesne, is ancient demesne in the hands of the Tenant in Frankfee, in the hands of the Lord &c. but the Rent which any Tenant *paravoile* receiveth, be it service, charge or secke, is ancient demesne, 26 H.8.fol.4.

f. 4 r. 4 Ed. 3. f. 53. and usage shall follow the nature of the Land whereof  
&c. 26. H. 8. f. 4.

Two coparceners make a Feoffment, reserving Rent, of the Rent they  
be parceners, and not jointenants, and there shall be no survivor &c. 38  
Ed. 3. f. 32.

Vide 26. H. 8. f. 4 per Shelley, & 14 H. 8. f. 5. per Roo, that Rent newly  
created, where Prescription serves not, cannot be of the nature of the  
land, in as much as it is by Custome, which cannot be without Prescrip-  
tion, it is said against this reason, that the Rent is the profit of the land,  
so in effect the same thing that it was before.

27 b. 89 Vide  
Fitz & Nor-  
wich, that rent  
out of Gavel  
kind shall be  
of the nature of  
the Land and  
partible. K. 22  
A. 78 ac. and  
the assise out of  
ancient demes-  
ne, shall be of  
the nature of  
the Land, and  
Gavel kind

XXXII. How rent service, or other inheritance shall be parcel  
of a Town, of a Castle, or a Mannor, and when it shall be  
severed.

**T**He lord of a Mannor grants 20 acres parcell of it to a stranger in  
fee to hold by certain services, and saith not as of the Mannor, yet  
the services are parcell of the Mannor, Mannor, 22 H. 6. fol. 50. A-  
vowry 16. 13 Ed. 3. Writ 240. and a man seised of a Mannor by dis-  
cent from his mother makes a Feoffment of part to hold by 4 s. with-  
out saying as of the Mannor and dieth, yet the heir of the mothers  
side shall have this Rent as parcell &c. 5 Ed. 2. Avowry 207. Quere if  
he had granted the whole Mannor reserving Rent to whom it shall dis-  
cent, 22 lib. Ass. P. 53.

Land bolden by  
Knights ser-  
vice shall be  
partible. v. 6. E.  
6. Dy. 72. 2 ef-  
cheat 179. 5 E.  
4. 8. 22 E. 4. 10.  
Mar. Dy. 133.  
16 Eli. 2 Dyer  
357 ac.

If the disseisor of my Grandfather leaseth parcell to one, and parcell  
to another in a Writ of Entry against the disseisor, I shall make excep-  
tion, but if my Grandfather had made Leases for life of parcell &c.  
and the Lessees are dead, and the disseisor lease the parcells in the same  
Mannor, I shall have a generall Writ to demand the Mannor, and if he  
plead that others are Tenants of parcel &c. it is sufficient to maintain,  
that he is Tenant of the Demesnes and services, as it was in the hand of  
Grandfather, 10 Ed. 3. fol. 56. Brief 701.

Tenant in Tail of a Mannor leaseth parcell for life, and grants the re-  
mainder to another, the issue in a Formedon of the Mannor shall make  
exception of parcell, so the Reversion is severed, 19 Ed. 2. Brief 845.  
Quere if he had leased the residue to the same person.

One who hath Waife and Stray as appendant or parcell of his Man-  
nor, grants the Moyety of his Mannor, he shall have every second Stray,  
13 Ed. 3. Brief 678. Vide Waife and Stray appendant to an office, 8 H. 7.  
fol. per Fineux.

A man aliens parcell of his Mannor, and afterwards is disseised  
the



the Heir in a Writ of Entry need not make by exception for it shall be of a thing aliened or severed by the Disseisor, or by him that had not power to alien by right, as Tenant in tail, and it shall be accepted although it be aliened but for life, for it shall not be recovered without naming the Tenant thereof, &c. 4 Ed. 3. fol. 8. Writ 713. 10 Ed. 3. 2. fol. 56. writ 701. 5 Ed. 3. fol. 54.

It is said, if there be Tenant in Dower, or for life, of parcell of a Mannor, and the Heir is disseised of the Mannor, and his Heir being a *Procurator* of the Mannor, that by the recovery he shall also recover the Reversion, but not, if the Endowment were after the Disseisin. *Perkins*. fol. 83. and there it is said, if the woman recover Dower against the Disseisor depending the same Writ for the Heir that it shall abate, 4 Ed. 3. fol. 8. & fol. 49 5 Ed. 3. fol. 36. & 54. But it seems otherwise, that by the recovery of two parts, the Reversion of the third part is recovered, 7 Ed. 3. fol. 44. But it is said in the end that it is not Law, &c.

It is said, that an Advowson is not parcell of a Mannor but appendant as a Common 44 Ed. 3. fol. 8. & fo: 29. 38 H: 6. fol: 38. & 43. So Waife, Stray, Leet, Way, Villain regardant, &c. Warren, and these will not passe without saying *Cum pertinent*. 8 H: 7. fol: 4. & 5. and how an Advowson may be parcell of an Honour, see 10 H: 7. fol: 19.

If a Disseisor of a Mannor make a Lease for life of one acre of Land parcell, &c. as to the Disseisee, the reversion is severed, for he shall make Exception. &c. 5 Ed. 3. fol. 54. And as to this disseisor it is parcell and passeth by his Grant of the Mannor, yet if a stranger out him of the Mannor, he shall not thereby out him of the reversion, untill the Lessee be also outed *per Littleton*, and therefore if he recover the Mannor the acre is parcell again, 4 Ed. 3. fol. 5.

The Husband seised of a Mannor in right of his Wife, they lease one acre parcell, &c. to B. and grant the Reversion thereof to a stranger, and after levy a Fine of the Mannor *come ceo* to the same stranger by the name of a Mannor, and take it again for life, the remainder to T. B. dieth, the Husband and Wife enter, and alien the whole, it was holden might enter, for the forfeiture in the said acre, and into the whole; yet it was agreed, if the Husband had aliened an acre parcell for life, the reversion thereof is severed, and now he is seised in his own right: But where the Wife joyneth, it seems the reversion is to both. Also the fine is as strong as a release, so their right is gone: likewise if the Grant of the Mannor were by Deed, the Wife may have a *Cui in vita* of the whole, if he have released; It was adjudged against the Wife, 18 lib. Aff. p. 2. Affise 212. 18 Ed. 3. fol. 38. And it was said that the Reversion continued parcell of the Mannor where the Husband alone made the Lease, *Quod mirum* 15 Ed. 3. Grants 62. and vide agreeing to it 38 Ed. 3. fol. 38. 5 Ed. 3. fol. 42. & 18 Ed. 3. fol. 54. that the Reversion continues to the Wife, &c.

If the Husband seised in right of his Wife alieneth parcell with the Advowson appendant, and dieth, now the Advowson is not appendant to the

the parcell, but to the Mannor, otherwise it is of Tenant in Tail, 43 *Ed.* 3. f. 26. 5 *Ed.* 3. f. 66. 43 *lib. Ass. P.* 8. 22. *Ed.* 3. fo. 6. *Darrein presentment* 6.

If before the Statute 1. enfeofed a stranger of 6 acres of parcell &c. to hold of me, the rent is parcell of the Mannor, and I am Tenant of the whole Mannor to every *Præcipe*. So of a gift in tail now &c. if a gift in tail be made of a Mannor, saving 6 acres, the acres are parcell, for exception shall be made it seems, the same proves not parcell, 13 *Ed.* 3. *Brief* 240. & vide 38. *H.* 6. f. 33. that they are not parcell &c.

Tenant in Tail of a Mannor, and of certain acres which sometime were parcell of it, alieneth the whole, and the alienee levieth a Fine of the Mannor, and of the acres by the name of a Mannor &c. he shall be vouched for the whole as a Mannor, but if the issue in tail be to demand &c. he shall demand the Mannor by it self, and the acres by themselves, for such was the Seisin of his Ancestor, or he shall make exception, if he demand the Mannor onely, 41 *Ed.* 3. fol. 23. *vouch* 70.

A man seised of two Mannors, alienes parcell of both, reserving one rent, this is regardant to both the Mannors and parcells, 17 *Ed.* 3. fol. 19. *Wards* 109. if upon partition by three parceners, 100 s. is allotted to two for equality, *scil.* 50 s. to the one, and 50 s. to the other, this is one rent, 29 *lib. Ass. P.* and parcell of their Mannors, as it seemeth 22 *lib. Ass. P.* 53. *Quare* because severall Mannors, in which Case the Advowson appendant to one is made in grosse by the partition, 1 *H.* 7 fol.

vide 31 *lib. Ass.* and where one alienes two Mannors in divers Counties reserving a rent, this is one rent and one Avowry, but how he shall have Customes and services, see 30 *Ed.* 1. *Droit* 73.

It was holden, if a man hath a house and twenty acres of Land, that before the Statute, he might not make Feoffment of the acres, nor of parcell to hold of the house, nor of the acres, nor of a Plow Land, but well of a Mannor, 8 *H.* 4. fol. 1. *Rescous* 5. but the Court, Curtelage and Barn may well be parcell of a house, 34 *H.* 6 fol. 45. and Land may be parcell of a Messuage, *per Fitzh.* f. 180.

And it is agreed, that Land may be parcell of a Town, so houses, and if they be decayed the soil is parcel &c. but a house is not parcel of the soil, though freehold, but may be demanded by the name of a parcell of Land containing 20 foot &c. where there is a chamber, yet a chamber is parcell of the house, not of the Land, yet Land may be parcell of a Castle, and it is proved by tenure, by Castell guard, for if the Land escheat, it shall be parcell of the Castle, 5 *H.* 7 f. 9.

Common or way appendant, or estovers to be burned in such a house, cannot be granted over, so not parcell, 5 *H.* 7. and fealty is not parcell of homage, nor homage of escuage, but incidents, 8 *H.* 7 f. 5.

A Leet may be parcell of an Hundred, *Quare* if of a Mannor, and a Court of Piepowders is incident not parcell of a Fair, 8 *H.* 7 f. 1. & 5. *Leet*

4. Leet may be appendant to a Mannor by Prescription, 4 *Ed.* 3. f. 10. *Avowry* 161.



An Advowson is said to be parcell of an Earldome, Honor or County; so all liberties given to an Earl upon his Creation are parcells &c. 10. H. 7. f. 19. 5. Ed. 3. *Aid of the King* 83.

A rent charge granted to a Lord, and Lords of the Mannor of D. before memory, and so continued is parcell of the mannor, 31 lib. Ass. P. 23. & vide supra, 22 lib. Ass. P. 53. that rent granted for equality of partition, is parcell of the Land and Mannor allotted &c.

An annuity may not be said to be parcell of a Mannor or house, but may well be of a Priory, 22 Ed. 4. fol. 44. but rent secke may be parcell of the Mannor, 31 lib. Ass. P. 23.

A feoffment before the Statute reserving half an ounce of Cotton yarn, three pounds of wax, lamp and oil, this is rent service, and one assise lieth of the whole, and each of them is parcell of the rent 35 H. 6. fol. 6.

A Prior doth covenant for him and his successors to do divine service in the Chappell of A. for him, and his Heirs in his Mannor, and for his servants, A. alieneth the Mannor to his second son, he shall have Covenant for this service, parcell of the Mannor passeth with it, but he may maintain this action also by Prescription, 42 Ed. 3. fol. 3. 2 H. 4. fol.

Corody of a house, a Plow-land, a Gown, a Stable, drink and fuel, all these are one Corody, and one assise lieth for all, and every one is parcell of the Corody, 31 H. 9. fol. 15. 30 lib. Ass. P. 4.

Land may well be parcell of an office, as to the office of the Warden of the Fleet, 1 H. 7. fol. 29. and there it is said, that Land may be appertenant to a Corody.

Apportioned as if the Lessee be covered.

The fees and profits are parcell of the office, to which &c. and passe by grant of it, as of a Herald &c. 5 Ed. 4. fol. 8.

### XXXIII. How rent service shall be apportioned by purchase of parcell.

Vide C. 6 part in Bruertons Case:

C. 8. part 109. in Talbots case.

A rent service

IN an Assise of Rent service upon non-tenure of the Land pleaded, the Plaintiff averring him Pernor ought to shew the quantity of the Land, for the rent is apportionable, 12 Ed. 4. f. 11. Assise 32. Non intelligo whether he speak of the whole.

at the common Law might be apportioned, as if the Lessee grant part of the Land to the Lessor, or part of the Land is recovered in Court, or by entrie, or a forfeiture, the rent shall be apportioned: So if the Lessor grant part of the Reversion to a stranger, so if Tenant by Knights service devise the Reversion of two parts 1. Vide C. Littleton 148. 39 Eliz. Callis and Hardings case. 43 Eliz. West and Lassells case there vouched.

One entire fee was holden by Castell guard, *scil.* to find a man armed for 40 dayes in the time of war, the Tenant enfeofed a stranger of the twentieth part of the fee, to do the twentieth part of the guard &c. and it was holden that this may be apportioned, and that he shall pay the twentieth part in money, *scil.* 4s. for two dayes, but if the tenure were to ward in his own person, this shall not be apportioned, nor no contribution shall be &c. *Avowry* 144. and note that both these Tenures are Knights service &c. 31 *Ed. 1. Assise* 441. But see this not certain, but *Littleton* saith that rent for Castell guard certain is socage, but *Fitzh. fol.* 256. that this also may be Knights service, because now there is no guard &c.

30 *Eliz. B. R.* in *Hardings* case. If a man make a Lease of Copyhold and Freehold Land rendering Rent, and the Copyhold descends to one and the freehold to another, the rent shall be apportioned, but see *Plowd. Cogit.*

1183 *b. 6. 16. & 3 b. 6.* Where a man granted a Rent out of Burrough English land, and Land at the Common Law, the Grantee had issue two sons that held it shall have the whole rent, for the rent is issued out of the whole Land, per my & per tout, and because the Common Law is more worthy then the custome, the prebeminence shall be to the heir at the Common Law. *Cogit. grantee, per my & per tout. prebeminence.* Vide 34 *E. 3. herriot* 1. if services be inire by alienation of part of the Land, every alienee shall do the intire service, so if my Tenant holdeth of me by a herriot of her alienee parcell, the alienee shall pay a herriot, and the service shall be multiplied, 45 *E. 3. 23. acc.*

Two parceners hold by homage, fealty, and to find a Cart to carry his Corn four dayes in *August*, the one alieneth her part, and they did their service in Common &c. yet it was held that the Lord should make severall Avowries upon them, 2 *Ed. 2. Avowry* 284.

If a rent service be intire there by purchase of parcell of Lands the rent is extinct, but if such a service be intire per bone pub. thereby the purchase of parcell of the Land, the service doth remain 35 *H. 6. 11 Eliz. Dyer* 285.

By recovery and Entry into one acre in *Cessavit*, every intire service is gone if it were annuall, as suit &c. not homage or fealty, nor no severall service, but for the portion, 40 *Ed. 3. fol. 41. 5 Ed. 2. Avowry* 206. Note that apportionment shall be according to the value, not according to the quantity of the Land, 18 *Ed. 2. Avowry* 218.

In a *Cessavit* of a house and 3 acres, it is no plea that the plaintiff hath entred into the house without answering to the rest, 11 *Ed. 3. Cess.* 21 but Entry upon parcell shall abate the whole Avowry for Rent upon a Lease, for the whole is in suspence, 9 *Ed. 4. fol. 1.* but it is there said, that if the Lord of the fee entreth into parcell, it shall not abate the Avowry for the residue, *Perkins* holds the contrary *fol. 16.*

See 30 *aff. 12 L. 148. A Rent* service may be extinct in part or portion for the residue by Act in Law, but the rent service cannot be suspended in part, & apportioned in part, but by the act of the

Lord and Tenant before the Statute of three acres of Land and two of Meadow by 20 d. the Tenant enfeofeth three severally of the three acres to hold of himself, and after the Statute, enfeofeth D. of the meadow to hold of the Lord, the Lord brings an assise of the whole Rent against D. and it shall abate, for he could not apportion his plaint for the three acres, because the Tenants of the three acres are not named in the Writ, 4 *Ed. 3. assise* 165. but it had been sufficient to have named the Mesne of the three acres &c.

A certain Meadow and four acres of Land are given in tail, the Donee grants one acre parcell &c. to an Abbot to hold of Donor, and the two party



acres to hold of the Donor, and reserves the Meadow, the Donor brings an assise of the whole rent against the Donee, and layeth the seisin of the whole by his hands, and it abated, for the rent shall be apportioned, and he is not the entire Tenant, although the Statute saith, that where the Tenant in fee simple aliens parcell, it shall be held *pro particula*, and by alienation the Tenant in tail, the Donor may not alter his Avowry clearly, but the diversity appears by this, that at the Common Law in assise every Tenant of rent shall be named, be it rent charge or service, and now the others are Tenants, but the Lord may distrain in every part, and avow upon his ancient Tenant for the whole at the Common Law, for that he remains Donor in Tail, 3 *Ed. 3. fol. 21. Assise P. 18. Assise 178*, but if the Mesne of the whole rent be named, it is sufficient without naming the other Tenants, *ibidem*.

But *Thorp* said, if there be a Lease for life, a Tenant in tail, rendering rent, and the Tenant in tail or lessee leaseh parcell to divers severally, that the Donor shall have severall assises, and severall Writs of Wast, but one Avowry, and it seemeth that in every Assise he may demand the entire rent against every one, or the portion at his Election, 22 *lib. Ass. P. 52 Conus. 72*.

A rent or a service either in respect of the fealty may be apportioned, but for the personality is indivisible and shall not be apportioned, *vi. 3. E. 4. 6. Plo. Com. 72*. If the Conussee surrender part the land to the Conusor, or the forfeiture of part of the land descends to the Conusor, the execution is gone.

C. 8 part Talbot's Case.  
C. 4 part Beaumont's case.

If Tenant in fee had aliened at the Common Law, three acres severally to hold of the chief Lord, the Lord may have an Assise against every one for the whole, but if the Tenant had aliened to hold of himself, the Lord might have the Assise against the Mesne onely, and now if the Tenant alieneth where the service is intire, the Lord may have an assise against every one of the whole *per W. tson*, but the book speaks that the Avowry is good upon the feoffee for the whole, but payment of one of the services dischargeth all, 22 *Ed. 4. fol. 36*. So of a rent upon a lease, which comes into severall hands, 22 *Assise 52 &c.*

If Lord or donor purchase parcel of the Land, the rent was apportioned at the Common Law in Assise, and he abridged his plaint thereof, 4 *lib. Ass. P. 5. Assise 189*. and so it was, 3 *Ed. 3. fol. 21*. where the Donor in Tail aliened an acre to the Donor, who brought Assise of the whole rent against him, and abridged, and where the Donee had aliened another acre to a stranger, it seems that for that the Assise shall abate &c. 7 *Ed. 3. 21*.

If the one sister in the life time of her brother entreth and Leaseh the whole, the brother dieth the other parceners enter into their portions, the Lessee shall hold her portion, 20 *H. 6. fol. 24*.

The Tenant Leaseh the whole or parcell for life, in tail, or for years, the Lord Paramount may avow in every parcell for the whole, *Perkins fol. 129*. And where the Tenant enfeoffs a stranger of the moyety to hold &c. no apportionment, because the Feoffment is not to hold in severalty, and therefore where one joint tenant alieneth his part, no tenure *pro particula*, but the parcener after partition shall hold *pro particula*, and so of exchange to hold in severalty, and Mesnalty, shall not be held *pro particula*.

for the Statute referres to Land, *Perkins 129.* but see 8 *Ed. 4. fol. 16.* Mesnalty held *pro particula &c.*

If Land held by 20s. rent be given to three joint tenants, one Avowry shall be, and not *pro particula* 35 *H. 6. fol. 51.*

XXXXIV. How a Rent charge or Rent secke shall be appor-  
tioned.

**C**Rantor of a Rent charge in tail, enfeoffs a stranger of parcell &c. If the Grantee entreteth into parcell upon the seoffee, or recovereth it in an assise, and after brings an assise of the Rent, it shall be appor- tioned, and the disseisin of parcell goeth to the Writ, and the purchase of parcell goeth to the action of the whole, and the recovery by the puisne Title makes it apporportioned, *Walsby saith, contra de rigore Juris*, but let that passe, but if the recovery were upon the eigne Title, *Watson* there saith, that the whole Rent remains out of the Land not recovered, 30 *lib. Ass. P. 12. Assise 300.* but parcell being discended it shall be ap- portioned, and if the Rent be 10 l. and the Land out of which be worth but 5 l. and the Grantee is seised of parcell of the Land, to the value of 10 s. the apporportionment shall be made according to the value of the Land, not of the Rent adjudged, 30 *Ass. P. 12.* and it shall be accor- ding to the value of the Land, not according to the quantity there- of &c.

A Rent charge of 10 l. granted to husband and wife, he dieth, she recovers Dower of the moyety of the Land, she would have demanded the moyety of the Rent also, but she could not by reason of joint tenan- cy, yet she demanded dower of the elder Title, of which the charge was not, 5 *Ed. 2. Avowry 206.*

If Land discend to three parceners, out of which the one had Rent charge before, it shall be apporportioned after partition made, so if he who hath a Rent in fee purchase the Land for life, the Rent shall be re- newed in his heir, 34 *lib. Ass. P. 15. 17 H. 6. fol. 3. & 4 lib. Ass. P. 22. 35 H. 6. fol. 3.*

Disseisin of parcell of the Land, suspends the whole Rent, 30 *Ass. P. 12. 35 H. 6. Avowry 46.*

If 20s. be arrear of 100s. by the year, he may avow if he will for 100s. *Quere* if he may avow for part of the 100 s. 21 *Ed. 3. fol. 1.*

*Seire facit 12. Vide Assise Divis. 23 8 Ed. 3. Ass. 387.*

If a man hath a Rent charge, or a Seigniorie out of an acre of Land, and that acre with another acre doth discend to him, and another, and upon partition the acre charged is allotted to the other, he shall hold it charged with all the Rent &c. 9 *lib. Ass. P. 22.*

34 *Ass. 1. Assise 318.* one Copar-  
cenor hath a  
Rent-charge out  
of the land of  
her Father who  
dieth before  
partition, the  
rent is suspen-  
ded in the  
whole, but after  
partition it is  
revived.

If a man hath a  
rent-charge out  
of 3. Ac. the  
Villain of the  
Grantee pur-  
chasethe part of  
the Land, the  
Lord entreteth,  
the rent shall be  
apporportioned, vi.  
*Perkins 129.*  
acc.



A charge issueth out of divers Lands, whereof a stranger recovers parcell, the Grantee brought an Assise of the whole, against him who lost his part, and it abated for not naming the recoverer, 8 Ed. 2. Ass. 392.

XXXV. Where and how entire Rent service, suit reall or service may be apportioned, and where another thing may be done.

IF Land out of which Rent service is due, come into divers hands, the one shall do the suit, and the others contribute, as it seems by *Rich.* but if parcell come to the hands of the Lord, be it by purchase or discent, the whole service is gone; 34 Ass. P. 15 for the annuall and intire is gone by the purchase, but if parcell discent the whole remains per *Parkins. fol. 16.* It is said, that service entire not annuall, as homage &c. continues notwithstanding the purchase or discent of parcell, according to 5 Ed. 1. fol. 65. *Avowry* 152. for there it is said, that contribution shall be made, which seems not to be Law.

Although the Lord shall not have but one suit service of Lands being in divers hands, per *Marlb. cap. 10. 34 Ass. &c.* yet he may distrain every Tenant for the whole, and if one do suit, all the rest are discharged, as to the Lord, but they shall make Contribution to the other, 11 Ed. 1. *Avowry* 101.

So of every entire service, that there cannot be apportionment, as of a horse, a hawk &c. 22 Ed. 4. fol. 36. but *Quare* if Contribution shall be made for other service then for suit, it seems not, nor for suit, if it be not by composition between themselves *Fitzh. fol. 162.*

Where Land out of which suit reall is due, comes into divers hands, every tenant shall do suit, notwithstanding the Statute of *Marlb. cap. 9.* and although that one Tenant hath all the Lands out of which the suit is due, the Lord shall have divers suits, and divers amerciaments of him for all the suits, 11 Ed. 3. *Avowry* 101. and if Land, out of which Herriot Custome is due, cometh into divers hands, every one shall pay a herriot, otherwise it is of Herriot service, 34 Ed. 3. *Herriot* 1. agreed of suit reall, 45 Ed. 3. fol. 23. by this it seems that jointtenants shall make but one suit, *Quare* of Tenants in common, because severall tenants, *Fitzh. fol. 162.*

If Land be charged to me by recognizance or Statute, and the Land come into divers hands, and I purchase parcell, or parcell discent unto me, I shall have execution of no part, because I cannot make contribution to my self &c. 34 lib. Ass. P. 15. but it is to be understood that all the Land is out of the hands of the Contor, for of that in his hands I shall have execution, 45 Ed. 3. fol. 22. 15 H. 7. fol. 20. & 15 Ed. 4. fol. 11.

c 6 part 2. in  
Braffons case.  
acc.

9 c. 8 part Tal.  
bqis case acc.

35 h. 6. 5. C.  
2 part 2 acc.

21 Hen. fol. 4. 13 H. 7. fol. 22. But it is holden that if I have execution of Land by Statute Merchant, and purchase the fee of parcell, or it descends unto me by one of the Conusors, all my estate is extinguished, per Bryan 15 Ed. 4. fol. 6. and note, that if suit service be due to the King, and it come into divers hands, ever y. one shalldo suit, as well as suit reall, 45 Ed. 3. fol. 23. Fitzherbert 156. So of parceners before partition and after wards.

XXXVI. *What things lie in in Tenure or may be held.*

**A** Vowson in grosse holden, and the heir was in ward for it, 20 Ed. 3. Darrein presentment 13. and holden by half a Knights fee, 12. Ed. 3. Darrein presentment 18. 33. H. 6. fol. 34. 15 H. 7. fol. 8. & 21 Ed. 3. fol. 3. Quare impedit 50.

Vide contra 5 H. 7. fol. 38. &c. Ed. 3. Mortmain 11. It was given in Mortmain.

The King may grant rent to hold. of him, and so may sell to a common person, and the King may grant a fee farm to hold *per servitia debita* &c. this is Knights service, 44 Ed. 3. fol. 45. Grants 47. 10 H. 6. fol. 12. vide Wards, Divi. 13.

If the Mesne grant the Mesnalty in tail reserving rent, this is a good reservation for the possibility of escheat, but in the mean time it is not holden, 1 H. 4. fol. 2. 9 Ed. 4. fol. 3. and a Fine was levied of services to hold of the Conusor, 19 Ed. 2. Fines 126. 14 Ed. 3. Avowry 117.

A. holds of B. by homage, and 20 s. 2 d. rent, B. grants to his son the 20 s. and reserves the 2 d. for life, rendring a penny, and after grants the homage 2 d. and the reversion of the 20 s. to S. A. attorns, the son attorns for the 1 d. and alienes the rent in fee, S. enters for forfeiture, so the rent is holden and by grant of the Reversion of the 20 s. the penny reserved &c. passeth as parcell of the Reversion, 14 Ed. 3. Avowry 117. 1 H. 4. fol. 1. &c.

A market or Fair lyeth not in tenure, 12 Ed. 2. Dower 157.

Plaint in an assise of office of Serjeanty of the Common Bench, 7 Ed. 3. fol. 3. Assise 135. So it seems it lyeth in tenure as a Formedon of office, or of the profits of a Mill, 18 Ed. 3. fol. 3.

Covenant to levy a Fine of Tenements and of a Fishing in the water of D. 1 Ed. 3. fol. 4. Fines 181. and that it lieth in Tenure, vide 40 Ed. 3. fol. 44. But in a Scire facias out of a Fine, by which the Fishing was granted to an Abbot, for which he grants twenty Shillings Rent, and makes him not Tenant, of the Soile: This was held.



held no rent service, because a fishing lyeth not in grant, nor is amenable, and it chargeth the person, 32 Ed. 3. *Scire facias* 100. but it was said to be ancient demesne, 40 Ed. 3. fol. 44.

An hundred Leet, or Knights fee lyeth not in tenure, and cannot be granted to hold &c. 30 lib. Ass. P. 5.

XXXVII. Where Lands &c. may be holden by two severally, of the one by conclusion, of the other by right.

**I**F my very Tenant granteth the Land in Tail, *Tenend. de capital. Dom.* the Donee payes the services to me, and gives notice, I may avow upon after as my Tenant by way of estoppel; not in right, see the contrary if it be not by fine, or matter of record, of the tenant in tail, but if he be Tenant in fee, he shall be estopped by matter in fact, 2 Ed. 3. fol. 33. *Avowry* 170. vide 1 *Divis.* 13. F. 20 Ed. 3. *Divis.* 19. D.

2 E. 4. 6. b. by  
Clob. vi. B. r.  
avowry 93. acc.

If the Lord accept service of the Disseisor, he is his Tenant by way of estoppel, 41 Ed. 3. fol. 26. 48 Ed. 3. fol. 9. 17 Ed. 3. fol. 6.

If a stranger avow upon my Tenant, who traverseth the Avowry, and this is found against him, he is now Tenant to the stranger also by conclusion, 32 Ed. 3. *Avowry* 113.

It being found that my Tenant holds of the King, and doth alien without license, whereby he sueth an *oustre le maine* by petition, and takes a feoffment by Charter from the King to hold of him, now he is my Tenant of right, and Tenant to the King by estoppel, 32 Ed. 3. *Avowry* 113.

A. 6. E. 3. 12. b.  
acc. 47 E. 3. 21  
acc.

So if my Tenant enfeoff the King and take it back again to hold of him, 45 Ed. 3. fol. 6. 20 lib. Ass. P. 17.

If the King seise a ward, I am put to a Petition, because another thing then what I was seised, 17 Ed. 3. fol. 31. 37.

Husband and wife by Proceffe out of the Exchequer acknowledge to hold of the King. It is holden that he shall have service and Ward, and the Lord put to his petition &c. So by suing of Livery by a false office, the heir himself is estopped, 46 Ed. 3. fol. 12.

If the Husband of a Lady of a Mannor confirm the estate of the Tenant to hold by lesse services &c. yet in right he holds of the wife, and by conclusion of the Husband, 10 Ed. 3. fol. 22. *Avowry* 238.

If the Tenant acknowledgeth to hold of the Lord by Knights service, by Indenture, it altereth not the Seignior, but by estoppel, 46 lib. Ass. P. 13. 39. lib. Ass. P. 3.

But by acknowledging to hold of another by Indenture, the heir shall also be estopped, if the Estoppel descend upon him, 35 H. 6. fol. 40. 41. but in the first case, the Heir within age shall not be bound, if the Lord hath not been seised according to the Indenture, 39 Ass. p. 3.

If the Tenant for life acknowledge the Reversion to a stranger, by aid, prayer, receipt or in in wast, or in *ad terminum qui preterit*, or by Fine, he is also his Tenant by estoppel, 37 H.6.fol. 5.5 lib. Ass. p.3. 45 Ed.3.fol.6.

Bryan saith, if my Tenant pay the services to to a stranger, yet he may afterwards deny him, if he avow by the seisin onely, and may plead *hors de son fee*, and Keble saith, that if Tenants pay their services to a disseisor of the Mannor, they may afterwards deny them, otherwise it is of an erroneous recovery, 6 H.7.fol.14. but 35 H.6.fol. 12. all agreed, vide 20 Ed.4.fol.17. agreed of the payment.

Quare if there be a difference between payment to a disseisor of a Mannor, and to a Pernor of a Seigniorie in grosse, for if the Tenants pay their services to him who hath a void grant, he shall distrain them again, Quare 6 H.7.fol.14.7 Ed.3.fol.8.

XXXVIII. Where the Tenure may be altered between the Lord and Tenant by their assent or act.

IT is holden, That the Tenant by Charter may avoid seisin had by encroachment by his Charter in Avowry, but if the Charter be to hold in Frank-marriage, or in Frankalmoigne, and doth not expresse the service, he may avoid it so, 10 Ed. 3. fol. Avowry 157.

A Prior which holds of an Abbot granteth by the assent of his Convent to hold of the Abbot by certain services, and to pay 100 s. for relief after every avoydance, and the Abbot seised of relief, avowed now for it, and well by the Deed as for service, yet without such deed a man shall not have relief of a religious house, 20 Ed. 3. Avowry 124. See an Avowry for Herriot. Custome upon a man of Religion, M. 2. Ed.2. Avowry 178.

If the Tenant grant that the Lord shall distrain in other Land for his services, this shall not alter the tenure, but shall be as a penalty, 9 H.6.fol. 9.20 lib. Ass. P.1. agreeth, where he grants at another place &c.

If my Tenant who holds by 10 s. grants to hold by 5 s. yet I shall have 10 s. per Pigot, but Bryan saith, that I shall have but 5 s. by the estoppel, 20 Ed. 4.fol. 16.

It is holden that a Tenure shall not be changed by grant of the Tenant in Socage to hold in Knights service, if the Lord hath not been so seised, and these cases are by deed indented, 39 lib. Ass. Assise P.3.

The Lord by Homage, fealty, and a pound of Pepper, may release or confirm to hold by the pound of Pepper onely, but he cannot reserve another service, nor increase the Tenure as Lord and Tenant of two acres, the one holds by 12 d. the other by 1 d. and the Lord confirms the estate in both to hold by 4 d. it shall not issue out of both, nor out of

49 E.3.7. The Lord in ancient Demefns confirms the estate of his Tenant to hold by intire services at the Common Law the quality of his estate is changed, & the lands discharged of the ancient services. C.9. part 140. acc.

the



Lord, Mesn, &  
Abbot, to the  
Lord confirms  
to hold in

Frankalmoigne,  
it is good, and  
the penalty is  
extinct, 4 E. 3.

br. Tenures 60.  
vi. C. Lit. 305.

what case the  
confirmation  
was by the  
Mesn, and not  
by the Lord Pa-  
ramount.

Lord and Te-  
nant by fealty  
and rent, the  
Lord by deed,  
the estate of the

Tenant to hold  
by a Resc. 7 E.  
4. 25. Lit. 122 it  
is void.

7 Eliz. Dy. 230  
the Lord in Kt.  
service confirms  
to his tenant to  
hold by a

the reser-  
vation is void,  
upon the estate  
before erected,

and the old Te-  
nure remains,  
vi 7 E. 4. 25. 4

E. 12. E. 4. 11.  
21 E. 4. 61. C.  
Lit. 105. & 10.

E. 3. Avowry  
100. acc.

the acre holden before by a penny, because he may not increase, &c. nor may change the Rent for a Rose, 9 H. 6. fol. 9. where he confirms in nine acres by the name of eight acres to hold a less Rent, the other acre is not charged of the old Rent, but it goes to the whole, &c. 7 Ed. 4. fol. 27.

Lord and Tenant by six marks, and to find a Chaplain to sing Mass, the Lord releaseth to the Tenant by Fine the Mass, reserving the six marks and two marks for the Mass, and it was held good, 26. lib. Aff. P. 37. Aff. 34. 9 H. 6.

The Lord may release to an Abbot his Tenant to hold in Frankalmoigne, because nothing is reserved, 4 Ed. 3. fol. And Wilby, thought there that he might reserve a Rose for rent, Littleton agreeth of Frankalmoigne.

One holds of the King as of a Mannor for repairing of Pales, and the King releaseth, reserving a rent for the Pale, and holden to be a new rent, not parcell of the Mannor, and that the King is not bound by the Statute *Quia emptores*: But at the last it was said, that it should be void, because the King had nothing in the Land, 10 H. 7. fol. 23.

Vide 49 Ed 3. where the Lord confirms to the Mesn to hold by a less Service, Confirmation to hold by a less Service of the same nature is good, if the Tenant be in possession at the time, but not if disseised, 14 H. 4. fol. 38.

### XXXIX. Tenants in ancient Burroughs and Cities, and their Priviledges.

**P**rescription that those of B. have been used to be sued by Writ of Right Patent of Land, &c. and to prosecute in the nature of what Writ they will, is good, for an ancient Burrough, as *Exeter*, so that they may devise Land. Or that the youngest Son inherits: So the usages and customs of ancient Demesn, and yet the King cannot grant such Franchises at this day, 37 H. 6. fol. 27. 12 Ed. 4. fol. 18. 40 lib. Aff. P. 35. where it is said, that all ancient Burroughs and Cities are of record in the Exchequer.

Ancient Burroughs where Land is devisable, and holds plea *Ex gravi querela*, they are not taxable to fifteens, 40 lib. Aff. P. 41.

The Kings Writ runs not in *London*, *Wales*, or the *Cinque Ports*, but this is by Parliament: But they may not prescribe that the Kings Writ runneth not here without other matter, 2 Ed. 4. fol. 1. & 19. And in *Lancaster* and *Chester*, the Kings Writ runs not, 2 Ed. 4. fol. 23.

In an Affise of Fresh force in *Winch.* and false Judgment brought there, because they used time out of mind to have Suitors there, and to be sued before the Bayliffs, and the King granted that they should not be sued

sued out of their liberty, but that they should hold plea as they were wont, this shall not alter their Customs, 31 *Ed. 3. false Judgment* 8. so that such may prescribe to hold plea, not to have Conusans, 9 *H. 7. fol. 11. 2 Ed. 4. fol. 19. & fol. 23.*

The Escheat of all Cities belongeth to the King, *Ex mero jure* of whomsoever they be held, 2 *Ed. 2. Escheat* 12.

A Citizen is he who is born within the City and inheritable by discent within the City, or he that is resiant and taxable to scot and lot, 38. *lib. Ass. p. 18. prescription* 34. It followeth not that he is a Citizen who hath Land within the City, *vide* 45 *Ed. 3. fol. 26.*

*XL. Where notice shall be given, and is materiall in another Action then Avowry.*

**I**F a Condition of an Obligation be made to wait upon *I. S.* every time that he shall come to *D.* he shall take notice of it; and if he be to account before Auditors assigned by the Plaintiff, he needs not to take notice, and where it is to enfeof the Plaintiff he shall hold, &c. 8 *Ed. 4. fol. 12. Arbitrement* 15.

A man recovers in Warranty of Charters *Pro loco & tempore*, yet he shall give notice if he be sued afterwards, 8 *Ed. 4. fol. 11.* And if the Ordinary refuse my Clark for Non-hability or Crime, and present within six months without notice, I shall have a *Quare Impedit*. So after six months 8 *Ed. 4. fol. 2. 38 Ed. 3. fol. 2.* So of Resignation, 1 *H. 7. fol. 9.*

My Tenant may pay his rent arrear without notice, where I recovered damages, so it be arrear for one or more years, 39 *H. 6. Bar* 79. So he may tender it to the Executors without notice given who are Executors, 21 *H. 6. fol. 27. Garnishment* 10.

If the King grant unto a Town, that if Toll be taken of them, that they may take their Goods again in *Withernam*, they shall give notice therof, &c. *R. 2. Grants* 108.

It was ordained by Parliament that certain Lands should be seised into the hands of the King, and restored to the parties: And in a *Sci. fac.* for not restoring against the Patentees, they were excused because they had not notice, but immediatly upon notice they ought to put them out of their hands, 43. *lib. Ass. p. 29. Traverse* 26. But the contrary was held in a *Premunire*, and that every man ought to take notice at his perill of the danger of the Statute, *P. 39 Ed. 3. Attorney* 36. But the Kings Justices in Judgment need not take notice of a particular act, &c. but the parties must plead it, 13 *Ed. 4. fol. 8.*

If it be found in *Jure patronatus* that the one party hath Right, he shall take notice therof at his perill, and shall make request within six months, otherwise the Ordinary may present by Lapse, 34 *H. 6. fol. 12.*



Lessee for life makes a Lease for years and dieth, the Termor ought to remove his Goods immediatly, and take notice, &c. and the reasonable space which he shall have shall be adjudged by the Justices, having regard to the distance of the place where he died from the Land leased, but he must take notice at his perill in convenient time, 22 Ed. 4. fol. 27.

XLI. *How a Rent-charge, or other Services, or other thing may be made parcell, regardant or appendant to a Mannor, or Lordship, or Land, or other thing.*

**V**Pon Partition, a Mannor is allotted to one Parcener, and Rent out of certain land for Owelty, &c. this Rent is regardant to the Mannor, and passeth by grant of the Mannor. But if Land parcell of a Mannor be aliened reserving Rent, this Rent is parcell of the Mannor, 22 lib. Ass. 53. Assise 224. And if upon the partition the one Parcener doth Covenant with the other to discharge, &c. of suit of the Land, this Covenant is regardant, &c. and the Feoffee of the other shall have it, 43 Ed. 3. fol. 3. Covenant 17. Vide Covenant Divis. 4. 2 H. 4. & Divis. 5. throughout.

A Lord who hath a Chappell within his Mannor makes a Church of it by presentment, this Church is regardant and appendant to the Mannor, 21 Ed. 4. fol. 1. *Quare Impedit*.

H: seised of a Mannor with the Advowson appendant, S: levies a Fine of the Advowson to H: upon which it is agreed that S: shall present one turn, and H: another, this is appendant for H: and in Grosse for S. but if H: had levied the Fine, &c. it should have been in grosse for both, 43 Ed. 3. fol. 35. *Quare Impedit* 134. But see if two Parceners have an Advowson appendant to a Mannor, the Mannor is allotted to the one, and other Land to the other, without speaking of the Advowson, this is in grosse for both: So if they agree to present by turn. But if the whole Mannor and Advowson do descend to the one, after it shall be appendant again, 2 H. 7. fol. 4. 13 Ed. 3. *Quare Impedit* 58 But 43 Ed. 3. fol. 35. contra, and that it remains appendant by turn to him that hath the Mannor, &c. and it is agreed, where there is no partition of the Advowson, that it shall remain appendant, 17 Ed. 3. fol. 38 *Quare Impedit* 69. 19 Ed. 3. *Quare Impedit* 59. 13 Ed. 2. *Quare Imp.* 170.

It is said, if a Mannor with the Advowson appendant descend to three Parceners, who make partition and present by turn, the Advowson remains appendant for all, but if there be three Mannors, wherof one hath an Advowson appendant which descend, and every one hath a Mannor, and present by turn, by agreement, this is in grosse for them all: And if the elder Sister hath the second presentment, and the younger the first, it is against common right by Pole, but the Book is otherwise, 13 Ed. 3. *Quare Impedit* 58.

Three Joynt-tenants of a Mannor with a Hundred appendant, two release to the third all their right in the Hundred, yet this is appendant for the third part, and in grosse for the residue, and passeth not, &c. 33 H. 6. fol. 4.

He who hath used to present at every second avoidance, as appendant to his Mannor, may declare that the Moyety is appendant, not the whole Advowson to every second avoidance. And if two Joynt-tenants of a Mannor to which, &c. and the one alien his part of the Advowson, this is in grosse and appendant to the other Moyety, 35 H. 6. fol. 33.

The Mannor of D. holden of the Mannor of S. Escheats, now the Mannor of D. is parcell of the Mannor of S. and the Advowson appendant to it shall pass by grant of the Mannor of S. *Cum pertinentiis*: But if both Mannors come to the King by forfeiture for Treason, the one is not parcell of the other, because this is by Prerogative, and not by ordinary Escheat, 6 Ed. 3. fol. 32. 32 H. 6. fol. 9.

Advowson of an Abbot or Prior appendant to a Mannor, as of the Church, 18 Ed. 3. fol. 15. *Quare Impedit* 15. and the Vicaridge appurtenant to the Mannor to which the Advowson is appendant, 7 Ed. 3. fol.

*Quare Impedit* 21. vide 22 H. 6. fol. 25. *Quare Impedit* 82.

A man shall make plaint of a Corody appendant to a Bayliwick, without demanding it also, 18 Ed. 2. Aff. 377. So of any other Affise.

Common of Turbary cannot be appendant to Land, for the grant of such Common *Quantum pertinet ad duas bovatas terre* is not appertenant but in grosse, 7 Ed. 3. fol. 43: Aff. 134. *quare* for Herle ruled it not, but ancient Hide and Gain granted *Cum communia* in 100. acres more & brethren, this is Common appendant, M. 15 Ed. 3. Aff. 111.

Affise of Estovers appertenant to two houses, to burn, repair, inclose, and to inclose two acres of Land, &c. and to do other things, 7 Ed. 3. Aff. 138.

A Leet may be appendant to a Mannor, House, or Land, not to a Chappell, or to a Church, 10 Ed. 3. fol. 5, Leet 8.

Wreck of Sea may not be said to be parcell of a Hundred, but Prescription that he and all the Lords of that Hundred, &c. have had Wreck, Waife, Stray, &c. within the Precinct is good, 11 H. 4. fol. 15. *Prescription* 25 44 E. 3. fol. 19. Custom 14, But agree that it is parcell of a Mannor, 11 H. 4. fol. 15.

Meadow may be appertenant to Land, and by grant of the Land *Cum pertinent* passeth, 3 Ed. 3. fol. 3. Bar 298. Common of Fishing may well be appendant to a Mannor, or a house, and three acres of Land, 4 Ed. 4 fol. 29. Common 8.

Common of Pasture may be well appendant to Land, but it may not be appendant to a house, 15 Ed. 2. *prescription* 51.

Frankfold may be appendant to Land, and made in grosse, 1 Ed. 3. fol. 1. vide that it may not be made in grosse but by custom, 11 H. 7. fol. 25. 5 H. 7. fol. 9.



If the Husband alien an acre parcell of a Mannor, with the Advowson and the alienee presents, the wife shall not present untill the acre be recovered, but if Tenant in Taile or Fee alien, &c. now the Advowson is appendant to the acre, and the issue shall not present till it be recovered, although the alienee hath not presented, 43 Ed: 3: fol: 25: 17 Ed: 3: fol: 3: 6 Ed: 3: fol: 56: *Warranty* 61: 13 H: 4: *Grant* 88 *vide* 22 Ed: 3: fol: 6. That the Presentation of the alienee grants not the possession against the wife, and the reversion of the third part of the Mannor, and of the Advowson assigned to the Mother of the wife, for Dower shall not pass by the Feoffment of the Husband after, *Feoffments* 116: and if the alienee after presentation alieneth the Advowson reserving the acre, the Wife may present without recovery of the acre, *per cui in vita*, 17 Ed: 3: *fi Darrein presentment* 9: 43 Ed: 3 fol: 25:

A man seised of a Mannor with the Advowson, aliens it, *Cum pertinent*, except forty acres of Land, the Advowson passeth as appendant, by the same reason it seemeth, if he alien forty acres of land *Cum pertinent*, except the Mannor, the Advowson passeth not, 14 Ed: 3 *estopple* 166: 5 Ed: 3 fol: 66 *Livery* 7:

Note that one Advowson may be appendent to another, 24 Ed: 3 fol: 30 *Quare impedit* 13:

*Finch* saith, That if a man grant an Advowson in grosse with an acre as appendant, and he presents at the next avoidance, that hee may make his Title as appendant or in grosse at his election, &c: 43 Ed: 3 fol: 14: *Quare impedit* 135:

## XLII. How a thing appendant may be made dis-appendent, and by what Act.

**A** Man disseised of a Mannor, to which &c. acknowledgeth a Fine for Release of the Mannor, and of the Advowson to the Disseisor, who render the Mannor *Cum pertin.* to the Disseisee, and it was holden that the Advowson passed not by the render, because it is not mentioned, and now it is not appendent, and that it passed not by the release without being mentioned, for the same cause, 12 Ed: 1: *Itin. Grant* 78. 18 lib: *Assise* p 2.

A man seised of a Mannor, to which, &c. gives the Mannor in Taile, the Advowson remaines parcell of the Reversion; but if afterwards he grant the Reversion to the Donee in taile, the Advowson is now in gross. The same Law is, if he give the Advowson first in taile, and after gives the Mannor in taile to the same person, 44 Ed: 3 fol: 16: *Quare impedit* 137: But see contrary to this case, 38 H 6 fol: 43: *Grant*, and note the reason in *Littleton* in jointenancy, that by Lease of the one joyntenant to a stranger for life, the Reversion is severed.

The

The King grants the Wardship of the Mannor of *D.* to *B.* without saying *Cum pertinet*, if the Grantee present as Guardian of this Mannor to the Advowson appendant to the Mannor of *S.* he is estopped to say, but that it is belonging to the Mannor of *D.* and then it passeth not, because it is not named, 24 *Ed. 3. fol. 30. Quare Imp. 12. &c.*

Disseisee of a Mannor presents to an Advowson, where he could not enter into the Mannor, and good; So after his entry into the Mannor, although that the Disseisor hath presented before *per Fitz fol. 36. 33 H. 6. fol. 37.* But the Disseisee of a Mannor may not occupy Common appendant, because it cannot be severed, 19 *H. 6. fol. 33.*

XLIII. Where Tenant by sufferance may be, and who shall be said to be Tenant by sufferance.

ONE made a Feoffment of all his Lands in *D.* except one Chamber, and afterwards makes him an Estate also in the Chamber, and died in the Hall, and his Heir brought an Assise, and was barred, because the Father claimed nothing in the Hall but at the sufferance of the Feoffee, so no discent, otherwise it should have been if he had entred without his assent or claim, *&c. 11 Ed. 3. Assise 86.*

But the entry of the Father by the consent of his Son Infant, and his Feoffee, is a Disseisin because the Infant cannot consent, 11 *Ed. 3. Assise 87. 13 Ed. 3. Assise 92.*

The Husband leaseth the Land of his Wife for sixteen years to *S.* who dieth, *P.* his Heir enters, claims the Term, and takes to Wife *K.* and dies within the term, the first Wife (her Husband being now dead) would enter, *K.* would not suffer her, wherby she recovers against *K.* as the first Disseisor, for by denying of her entry, the Disseisin began, and the entry of the Heir before was no Disseisin, because he claimed nothing but the Term: So Tenant by sufferance, and his dying seised is no discent, 11 *Ed. 3. Assise 88.* But if no Lease had been made, and the Heir, or any other had entred claim a Lease, or Wardship, I may have an Assise against him at my pleasure, or may admit him Lessee or Guardian, 28 *lib. Assise p. 111: Assise 264.* and if he demise to *T.* I shall have an Assise or account against *T.* so a disseisin at my election.

A Disseisor enfeoffeth his son, and takes the profits in the Assise, the Infant shall be named, for he shall be intended to take the profits according to the Feoffment, if he disclaime in the Land, if it be not proved that he took them to his own use, 13 *Ed. 3: Assise 92. 8 Ed. 3. fol. 64. 16 lib. ass. p. 9. Assise 207.* The entry of the Father is a Disseisin if he claim *&c.*

If Tenant by sufferance alien in fee, both are Disseisors, *Ita quod vivente altero, &c.* so of a Termor or Guardian, 8 *E. 3. fol. 64 Ass. 149. 28 lib. Ass. p. 11: 10 E. 4. fol.*

Lessor.



Lessor enters by consent of the Lessee, who removes his Goods, this is a Surrender, but if he enter without his assent, this is a Disseisin, 8 Ed. 3. fol. 74. Aff. 146.

If a Termor hold over his Estate. *Hussey* saith, that he is Tenant of the Fee, because he is in by wrong, but he is no Disseisor because he entered by Title, and therefore discent shall not take away the entry, 22 Ed. 4. fol. 38. and therefore there he shall not traverse the dying seised in fee, 11 Ed. 3. Aff. 88.

If Tenant *pur autre vie* holds in after the death of *Cestui que vie*, he is Tenant in the fee, and the Writ against the Lessee shall not abate by the death of *Cestui que vie*, so he is not Tenant by sufferance, but not a Disseisor. So *Watson*, thought of another Termor that he is Tenant in Fee, 18 E. 4. fol. 25. 22 Ed. 4. fol. 38. 9 Ed. 4. fol. 8.

Lessor at Will dieth, the Lessee pays the Rent to the Heir, this is void, and he is not but Tenant in sufferance, 21 H. 7. fol. 38.

XLIV. *Who is Lord of a Town, and in what place he shall make his Pound.*

**H**E is not Lord of a Town, who hath the Town in possession, but Tenant, and he is Lord of whom the Town is holden, and if there be divers Mesnes, every one is Lord of the Town, 22 H. 6. *Prescription* fo.

If one distrain for Rent or Services of his Tenant in Fee for life, or for years, he shall not make a Pound in the same Land, but he shall where he distrains his Tenant at will, and it determines his Estate; But for Damage feasant a man may make his pound in the same Land, 14 H. 7. *Avowry* 263. So note, *Avowry* good upon a Tenant at will, or a Copyholder for Rent, H. 6. R. 2. *Avowry* 86.

XLV. *Avowry for Frank-fold.*

**P**rescription to take Sheep by night, which feed by day for foldage, is good, 5 H. 7. fol. 9. *Prescription* 21. for manuring the Land.

XLVI. *What shall be said to be Service.*

**A** Tenant was bound to find a house for the Lord for keeping of his Court from three weeks to three weeks, and it was held to be Service, *Temp. Ed. 1.*

One held to find two shillings to the aid of the Sheriff yearly, and two shillings to the keeping of the Castle of *Rocke*, and it was held to be Service, although it shall be done to a stronger, and the Avowant said not that he is charged therewith, 16 Ed. 3. *Avowry* 93.

One held by inclosing a Quick-set here with a Pale, 32 Ed. 1. *Avowry* 245.

XLVII. *Avowry for a Distresse taken in the high Street, or out of his Fee.*

**D**istresse taken in the high Street shall not abate the Avowry, but he is put to an Action upon the Statute 11 R. 2.

XLVIII. *Tenure by these words, Rendring Rent for all Services, and doing to the chief Lords Services due, or to hold of the chief Lords.*

**A** Feoffment rendring a penny for all secular Services and demands, *Et faciend. Dominis servicia debita*, here he holdeth of the Feoffor as he held over, &c. But if the Feoffee be distrained by the Lord Paramount for any service of the Feoffor, which lye which he shall have in payment, he shall not have a Writ of the Mesn, if they be to be done by another in proper person, &c. So by these words, *Faciend. &c.* he is not bound to pay the Service to any but to the Lord next Paramount of his Feoffor, *quare*, and here it was agreed, if the next Lord release to the Mesn to hold by less Services, &c. the Feoffee shall have the advantage and shall hold of him but as he held over, 49 Ed. 3. fol. 10. *Account* 44. The same Law is of a Gift in tail made now by such words, 2 Ed. 3. fol. 33. *Avowry* 170. 3 Ed. 3. fol. 12, *Avowry* 90. *vide* H. 12. H. 3. *Wards* 152. *hic* C. *vide* 31. lib. *Aff. P.* 30. 25 Ed. 3. fol. 46. 13 Ed. 3. *Warranty* 92.

Feoffment before the Statute of parcell of a Mannor to hold of the chief Lord, and yeilding to the Feoffor Lord of the Mannor two shillings, now he holds of the Feoffor, and not of the Lord, 22. lib. *Aff. P.* 53.

Gift in tail, *Tenend. de capital. Dominis*, this is void, and he holds of the Donor, 2 Ed. 4. fol. 6. 4 H. 6. fol. 20. 45. Ed. 3. fol. 27. *vide* *Herle* said, that the Lord shall have Ward by these words, and the Donor the Escheat, 6 Ed. 3. fol. *Estoppel* 121.

It seems the King may choose whether he will have the Donor or the Donee to be his Tenant, but upon a Gift in tail, this remainder in Fee to hold of the Lord, this is good, 4 H. 6. fol. 20. 45. Ed. 3. fol. 27.

Gift



Gift in Frankmarriage, *salvo forinfeco*, and afterwards grants the services, saving the Reversion, the Grantee shall have the Ward, *Non est lex*, 26 lib. Aff. P. 66.

One renders by Fine for life to hold by the eleventh part of a Knights fee, the remainder of parcell to a stranger to hold by the twentieth part of a fee, the remainder of another parcell in tail to a stranger, to hold of the Donor & *faciend.* to the Lords services due for the Donor, and the first reservations are gone, for *wilby* faith, that Tenant for life, and he in remainder may not hold by severall services, and specially by divers escuages, 19 Ed 3. Fines 71.

Feoffment *tenend. quiete & libere faciend. servic. forinfecum quantum pertinet*, now he holdeth of the Donor, but if he had said *faciend. forinfecum cap. Dom.* he had had held of the chief Lord &c. 12. H. 3. Wards 152. *vide supra A.*

An Abbot was enfeoffed to hold by certain services *pro homagio*, and all demands, *salvo tamen scutagio quando currit*, yet the homage and Knights service is taken away by the first clause, & it shall not be revived by the latter, which is contrary and cannot stand, 19 Ed. 2. Avowry 224. but afterwards he shall do scutage, which is socage, for this agreeth to the premises, but if it had been said, *salvo forinfeco*, this is Knights service in the first case.

Tenant in Socage grants in Tail, rendring 12 d. for all services, *salvo forinfeco &c.* and there it was held, that by this last clause he shall hold in Knights service, if the Land be so holden over mediately or immediately, 26 lib. Aff. P. 66. Grants 75. 8 Ed. 3. fol. 67. Avowry 154. *vide* 25 Ed. 3. fol. 10. 5 Ed. 3. fol. 10.

Note the difference before of Feoffment *pro homagio &c. salvo scutagio* there he shall pay no escuage, but that which is socage, and where it is said, *salvo forinfeco*, it is Knights service, if the Land be so holden of any one, 19 Ed. 2. 26 Affise, 8 Ed. 3. & 31 lib. Aff. P. 15. & 30. 13 Ed. 2. Avowry 89.

Land given to hold by rent for all services *salvo forinfeco &c. et si praelata terra releviari debeat pro dimidia marca tant. releviar. pro Wardis, maritagis, et singulis exactionibus*, in this case no wardship nor relief is to be paid, 31 lib. Aff. P. 15.

Feoffee to hold by 6 d. for all services, *et ex illis 6 d. solvi debet scutag.* this is but Socage *Divis. 29 A.* So Feoffment to hold by 2 d. and escuage is Socage, 3 lib. Aff. P. 30. *supra D. 19 Ed. 2.*

Feoffment to hold by homage for all exactions, or by Homage Fealty and escuage for all services and demands, it shall not exclude any service incident to Knights service, but from suit of Court, and the like, 14 H. 4. fol. 2 Avowry 10. &c.

Land given in Tail for homage and services to hold by two marks for all services, exactions, and demands, *salvata Secta curia. Halls*, he holds by Fealty and homage, and the services reserved, but the relief is taken away

away by the word, demands. *Thirn.* also thought that Homage is taken away by the word, demands, which comes after, but if he had said to hold by 2 d. for all demands, *salvo homagio* or *forinfeco*, he should have had these services, because reserved after the word, demands, 13 R.2. *Avowry* 89. but it seems that the word (for all demands) excludes onely the services not comprised in the deed, 14 H.4. but there (*tenend.*) refers to all services in the deed, but not in 13 R.2. & 13 R.2. he shall have ward and marriage, *Quare* for he shall not have relief, *ibidem*.

A Prior gives Land to *W.* *pro homagio & servicio suo, reddend. successoribus suis*, 2 s. *pro omnibus serviciis, exactionibus & demandis, ita quod le Prior nec success. ne demander nisi homag. et 20 s. &c.* it was holden that the heir need not do homage by these premises, nor the assigne of *W.* when the deed goes further, *Ita quod &c. nisi homag. et 20 s.* it makes the homage perpetuall, so the premises alter by the conclusion, 8 Ed. 3. fol. 67. *Avowry* 154.

Feoffee before the Statute rendring Rent, without saying to whom &c. he shall hold of the Feoffor, 8 Ed. 3. fol. 53. *Aff.* 147. but if nothing be reserved, nor no Tenure expressed, he holds of the Lord Paramount. So if he said *reddendo* 2 s. the Feoffor shall have it as rent secke, 33 Ed. 3. *Annuity* 52. *Laicon* agreeth that *reddendo* is not a word to make a tenure, 21 Ed. 4. fol. 62. but this is not Law, for a Feoffment *reddendo* 2 d. to the Feoffor, *et fac.* to the Lords &c. he holds of the Feoffor onely, 49 Ed. 3. fol. 10. and *Perkins* f. 121. and holds of the Feoffor where no tenure is expressed, 3 lib. *Aff.* P. 8. 45 Ed. 3. fol. 15. *Cess.* 15.

Feoffment to hold of him by &c. during his life and doing *capit. Dominis* services due &c. after his death to hold of the chief Lord for ever, it is held that he shall hold of the Feoffor during his life, and afterwards of the Lord &c. and note it was after the Statute of *Quia emptores terrarum*, 2 Ed. 2. *Avowry* 185.

Feoffment to hold by services due, is of the Feoffor, 44 Ed. 3. fol. 45.

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XLIX. Where the King may make a Feoffment to hold of of himself.

One holds a Barony of the King, and alienes parcell before the Statute to hold of him without license, the King seifeth, and renders again to hold of himself &c. how this shall be held, *vide* 20 Ed. 3. *Affise* 122. 124.



**L. Where the Tenure of the King shall be in chief, where not.**

**L** And holden within the Cinque ports holden of an Honor being in the Kings hands, comes to the King who seifeth it, and leaseth it to J. now in his hands, it is of the nature of the Cinque ports, because escheated to the King but as parcell of the Honor, 49 Ed. 3. fol. 24. *Jurisdiction* 55. So not holden in chief of the King, and yet all the mean Seignories are extinct, *Vide grant le Roy. Divis. 24. 47 Ed 3. fol. 21.*

If Land holden of any Honor comes to the Kings hands who alienes it, it is held of him by Priority, although by posteriority before, but he shall not have Prerogative of Lands holden of other Lords thereby, which proves that the Mannor is not held of him in chief, but as of the Honor &c 5 Ed. 3. fol. 4. *Prerogative* 20.

If an Honor come to the King by common escheat, whereof a Mannor is held in Knights service, now this Mannor is held of the King in Knights service as of his Honor, and not in chief, 5 Ed. 3. fol. 4. and 5. *Prerogative* 20. *Quare* if it come by forfeiture, 26 lib. *Ass. P.* 57. *vide Divis.* next following.

All Lands coming to the Kings hands by forfeiture of Treason are held in chief, 46 Ed. 3. *Petition* 18. & 19.

**L. I. Where the King shall be seised in right of his Crown by forfeiture, and where otherwise.**

**T**He King seised the office of Chamberlain for forfeiture, now he had it in right of his Crown, for this office, and the office of the Marshall are *de Jure Corona*, and by the seisure he defeats mean interests, although the officer were Tenant in tail thereof, 11 Ed. 4. fol. 1. *Grants* 25.

If a Mannor which hath a Franchise come to the King by purchase or forfeiture, whether the Franchise be extinct, *vide* 43 lib. *Ass. P.* 10.

One holds a Mannor of an Honor, and dieth, his heir being within age, who makes agreement with the Lord of the Honor, and enters at his full age, afterwards is forfeited to the King for Treason, now it is holden, that the Mannor shall be held of the King in chief, by *wasson*, but the book is not so, but that he being within age shall answer the King of the issues &c. but if the Mother were Tenant in Dower of a parcell and dieth, and he was also seised of other Land in fee after the forfeiture, and they were seised untill the heir sue his livery, 26 lib. *Ass. P.* 57. *Livery* 33, and it seems that the Mannor shall not be holden in chief, but if the Mannor and the Honor come to the King for Treason, he shall be seised

in *jure corona* of both, and the one not holden of the other, 6 Ed. 3. fol. 32 Divis. 41. And if the Honor onely come to the King for Treason, and the Mannor is of the nature of the Cinque ports, it shall remain in the same, 49 Ed. 3. fol. 24. which it should not be, if it held in chief, for if Land holden in chief be in the Cinque Ports or in *Wales*, the Kings Writ runs not there of them, and are not pleadable there &c. as where a Castle or County there comes to the King for Treason, and he giveth it in tail it was pleaded here, 33 Ed. 3. 3. *Jurisdiction* 23.

Certain Lands found to be holden of the King, as of his Honor of *S.* by Knights service, and that he hath aliened upon condition, the other traverseth, and the alienation found without Condition, but no *Oustre le main* till tried. If the Honor were an ancient demesne of the Crown, for then he ought not to aliene without licence, but if the Honor come by common escheat, the Mannor is holden in Knights service, and may be aliened without licence, 42 lib. Ass. P. 6. *Traverse* 24.

See well of this in *Grants le Roy Divis.* 24.

Tenure to find a man in war wheresoever within the foure seas, is grand Serjeanty, and if he cannot find another, he ought to go in his own person, and relief here shall be to the value of the Land by the year, 11 H. 4 fol. 7. Bar 184. See more *Wards Divis.* 40.

LII. Where a man may plead in abatement, and may also avow, and how conclude, Vide *Replevin Divis.* 2.

**A**vowry was for fealty in another Town, and the plaintiff was compelled to maintain his Writ, although that he concluded in Barre, 31 Ed. 3. *Avowry* 110. Vide *Divis.* 21.

LIII. *Avowry for fifteens.*

**T**he Collector appointed Dozener of the Town to distrain for fifteens, 20 Ed. 3. *Avowry* 130. and he avowed it without shewing his warrant, P. 12. Ed. 3. *Mrans faits* 65.

LIV. How an *Avowry* may be made of beasts delivered by *Wythernam*, and how in the second deliverance.

**R**eplevin of kine, the Defendant avoweth the taking of a heifer, and saith, that the plaintiff was non suit in another *Replevin*, and these



kine remain with him in lieu of others by *Wythernam*, and compelled to answer to the supposed taking, for the Avowry is understood of the first taking, 2 *Ed. 3. fol. Avowry 171.*

In a Replevin of three heifers, the Bailiffe acknowledgeth the taking of three oxen, and the plaintiff was non suit in a Replevin, and for the three oxen claimed, the heifers were delivered unto him &c. It was holden that the plaintiff should declare upon the three oxen first taken, 33 *Ed. 3. Avowry 256, vide Replevin Divis. 10.* and it was so held *per curiam*, 13 *Ed. 3. Replevin 37.*

L V. How one County may be made parcell of another.

**B**Y Commission *de perambulac. fac.* at the suit of the King, Land in one County, allotted to Land in another County, yet it is the same Town which it was before, and *Wilby* saith, that it belongeth to the King to limit certain Counties, and if this bind not all the Counties they will never be certainly known, yet an Abbot brought a Writ, and he was not estopped to say that the Land was in another County by such allotment of Record, *Quare*, but perambulation made by consent of the parties, shall bind them and their heirs, &c. *M. 29. Ed. 3. fol. Estoppel 278.*

Tenure to pay 12 d. or a pair of Spurres, it is a good plea that he hath paid the spurres, if he distrain for the 12 d. *T. 43 Ed. 3. Barre 194.*

Barre.

# BARR.

I. Where recrit of Homage or Fealty shall be a Barr of Land, and where not.

**I**T was sayd, If the Disseisee taketh Homage of the Disseisor, but for his life, he shall be barred of Affise: But *A.* his Heir shall have a good Writ of Entry upon the same Disseisin, made to his Ancestor, *Fitzh: Quod nota, 17 lib. Affise P. 3. and Hil. 17. E. 3 fol. 6. et vide* agreeing thereto, where in a Writ of Entry in *le post*, upon Disseisin made to the Grand-father, he alledged acceptance of Homage by the Grand-father and Father of the Demandant, and tendred it to himself, & *non allocatur*, whereupon he alledged a Deed of the Father of confirmation, and at issue upon the Nonage, &c. *Temp: Ed. 1. Affise 423. vide* that the elder son shall not have the Land given by the Father to the middle son in fee, to hold of him by Homage, if he dye without issue after that he hath done Homage to the elder, but the youngest Son shall have it, but the issue of the eldest Son which was born at the time of the Homage accepted, shall not be estopped thereby, but if he were not then born, he shall never have the Land, by the Justice. *Temp. Ed. 1. Avowry 235.*

A woman joynt grantee with her husband of a Signiory being now sole, takes Homage of the Feoffment of her Husband, of the Tenancy whereof she hath Title of Dower, whereupon shee traversed it, *P. 11. Ed. 3. Dower 63.*

He which hath taken Homage, shall never avow for releif, *P. 15. E. 3. Releif 5.*

The Tenant voucheth a Prior, and binds him by this, that his Predecessors have received his Homage for the same Land, and that he hath tendred it to his Prior, and he was ousted of the Voucher; *47 H. 3. Voucher 270.*

And where one shall vouch the Heir for such cause, he may disclaime in the Homage, and the voucher over, *47 H. 3. Voucher 271.*

An Abbot brought a Writ of entry upon Disseisin to his Predecessor,

and

*11 E. 3. Abbey 9. If a Parson makes a lease for life, and dieth, and his Successors accept fealty of the issue, he shall not avoyd the Lease during his life by his receipt. vi. 11 E. 3. Abbey 9. before contrary.*



and was not concluded by acceptance of Fealty, for *Hill* sayd that it is not *Juris utrum*, *H. 12. Ed. 3. Bar 252.*

If the eldest Son be attained in the life time of his Father, and hath a Charter, and after the Father dyeth, so that the Lord is to have the land by escheat, yet if he accept the services of the eldest Son, as Fealty and Rent, he is concluded, and the same shall retain the Land, *Tr. 131. Ed. 1. Discent 17.*

In a Writ of Right after the grand Assise chosen, the Demandant confesseth that he hath received Homage of the Tenant for the same Land, whereupon the Assise was discharged, and awarded, that the Tenant and his Heirs should hold the Land acquitted, not the Demandant and his Heirs, *5 H. 3. Item Droit 66.*

4 E. 3. 22. By Acceptance of the rent and

services by the hands of the feoffee, the Lord shall not be charged of releif due before

13 E. 3. guard.

154. 32 E. 3. 3

F. N. 142

Lord and Te-

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Tenant enfeoffs

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the wardship of

the ward.

If the Lord hath accepted Homage of the Feoffee of his Tenant, he shall never after be received to an Averment that the Feoffment was made by Collusion to re-enfeoff the Heir at his full age, for by the acceptance he hath affirmed him his Tenant, &c. *Tr. 32. Ed. 3. Wards 33.*

*Prisot* saith, that the Lord shall not lose the Wardship of the Heir of the Feoffee of his Father, of whom he hath received Homage in the life of his Father, for this is Collusion apparant, although that the Feoffment be made *Bona fide* by him, *P. 33 H. 6. fol. 14. Collusion 36.*

*Berry* saith, That Seisin of services, doth not take away the Lords Escheat, if he accept not Homage of a new Tenant, &c. *M. 11. Ed. 2. Escheat 13.*

If the Lord accept the eldest Son, Feoffee of his Father for his Tenant by services received, viz. Fealty, &c. in the life of his Father, he shall be concluded from having of him after the death of his Father, although he be yet within age, *Non sic* by acceptance after the death of his Father, for this the Grand Charter willeth, *Cap. P. 31. Ed. 1. Wards 155.*

The Tenant holdeth by Fealty, and 20 s. Rent, and enfeoffeth a stranger to hold of the Lord by Fealty and 4 d. the tender of the 4 d. is void, but if the Lord accept it, he shall be concluded of all that was due before, *P. 7. H. 4. fol. 14. Avowry 51.*

But in a Writ of entry *Sine assensu capituli*, acceptance of Fealty is no Bar, because they may have Homage which another cannot have, and therefore Fealty received, shall conclude him, &c. And Justice *Thorne* of Action, &c. *Temp. Ed. 1: Juris utrum 13.*

Disseisee shall be bound to avow upon the Disseisor, of whom he hath accepted Homage or Fealty, but acceptance of Rent shall not Bar him to avow upon the Disseisor afterwards, *per Paston, 21 H. 6. fol. 24.*

**II. Where receipt of Rent shall bar a man of Dower, and where not.**

**H**usband and Wife give the Land of the Wife in taile to a stranger, rendring rent, and shee accepts the Rent after the death of her Husband, and thereby shall be concluded to defeat this gift afterwards, per *Ascne and Newton: Paston contra*, and sayd, that it had been oftentimes adjudged in the Books, that she shall not be barred, &c. *H. 21: H. 6: f. 24: Cui in vita*, 1: *Newton* said there, that if the Husband alone did lease the Land of the Wife, that she could not have the Rent reserved, and therefore she should not be barred by the acceptance, &c. Payment of Rent granted by Tenant in taile, or of that which was reserved to the discontinuance upon the Estate by him taken back again, shall not bind the Issue; but that he may well retain it after himself had payd it, because the Estate or Grant determined by Remitter of the issue, &c. *21 H. 6, fol. 24. Cui in vita.*

accepts it not, it did not barr her in *Cui in vita*, for she accepted it as an annuity, See the difference where the acceptance shall bar the wife, where not, *6 H. 7. 3. 11 H. 7. 13. 15 E. 4. 17. 21 H. 6. 15 21 H. 7. 38. 15 E. 4. 78.*

But see *Moyle contra*, Where the Husband alone doth discontinue the Land of his Wife rendring Rent, and she accept it, that she shall be barred of the Land, and said, If my Father disseise the Father of my Mother, and she and her Father dye, and my Father alieneth, rendring rent, and dyeth, and I accept the rent, this is a barr of the Land, to which the Serjeants agreed, *M: 39: H. 6: fol. 27. Cui in vita 2.*

and wife before the Statute of *32 H. 8.* make a Lease by word, rendring Rent, dies, the wife accepts the rent, vide *1 Mar. Dyer 91.* if her acceptance do affirm her Lease, it seems here it doth not, but *vi. C. 4. part. Vernons case*, *21 H. 6. 24. 4 M. Dyer 147 33 Eliz.* in *Mosley and Gilberts case*, and afterwards, *36 Eliz.* adjudged, the Lease was good by word, and the acceptance of the wife did make the Lease good.

Acceptance of rent by the issue in taile of the Lessee of his Father, shall barr him of the Land, *H. 21. H. 6 fol 15. A.*

The Lord accepts Fealty and rent of him who was outlawed of Felony in the life time of his Father, &c. and is thereby barred of the Land which he ought to have by escheat, *Tr. 31. Ed. 1. Discent, 17.*

In Affise, the Tenant said, that the Plaintiff accepted rent of him for the same Land, depending it, and the opinion was, that this is not but to the Affise, and in truth he had let the Land rendring the rent, with reentry for non payment; and so for some waite done, wherefore he confessed the acceptance of the rent, and said, he did re enter of the Waite, done

*26 H. 2. Husband and wife, seised in the right of his wife make a Feoffment in fee, the Feoffee by Indenture covenants, that he and his heirs will pay to the Feoffee and his wife, and the sureties of them; the husband dies, and the wife*

*Vi. 1 H. Dyer 91. C. 4 part 1. Acceptance of Land which is not in demand is no barr of dower.*

*If Husband the Husband,*



done &c. and good. So it seems that he could not maintain the Affise upon he entry for non payment, if he himself accept the rent pending it, &c. 45 lib. Affise p:5:estopple 142.

A Commander as Officer of a Prior, leased Land, and takes a Fine for it, and the Prior accepted the rent reserved, and afterwards brought an Affise against the Lessee, and recovered, for it was sayd by the Court, that a Bayliff nor Steward, &c. cannot by any usage lease the Freehold &c. but well by Court Roll, &c. M. 19. Edw. 3. Feoffments & Fines 68.

### III. Where receipt of parcell of the Rent shall barr him of the residue.

IF he who hath cause to have all the land by *Cui in vita*, assigneth parcell to the wife of the Feoffee of her husband in Dower, thereby she accepts the residue and barrs her self of that which shee hath assigned to the wife, by *Herle*, 7 Ed. 3: fol. 62. *Cui in vita* 13. *Parnells case*.

In *Cui in vita*, the Tenant sayd, That she hath accepted the third part for Dower, and hath released of all actions and demands, and because he could not have both pleas, he held himself to the release, M. 10. Ed. 3. *Double plea* 8. But see where the Husband alieneth the land of his wife, and took it back to them in taile, and dyeth, the Lord assigns the third part to the Wife for Dower, and gives her a 100 s. to be content; and she brought an Affise of two parts, and recovered, notwithstanding the acceptance; and held the 3 part in her ancient right, 17 l. *As*. p. 3: *Aff*. 308. 17 Ed. 3. fol. 6. But see there, if she recover Dower, it shall be a barr to the residue, it is a good barr in *Cui in vita* that the Demandant hath Dower depending against him for the third part of the same Tenements, 8 Ed. 3. fol. 12. *Writ* 444.

vi. C. 4. part,  
Vernons case,  
it was holden  
in this case no  
Bar.

In a *Scire facias* for execution of Land recovered in Dower, the Tenant alledgeth that after &c. she had accepted of such Land in allowance of all her Dower of the same person against whom &c. And notwithstanding that execution was awarded, for hee shall not have the averment without a specialty: Also the Demandant alledged how she had right to the Land by a fine acknowledged to her husband and her, &c. P. 31 Ed. 3. *Scire facias* 99.

### IV. Where

**I V. Where acceptance of other Land shall bar a man of Land to which he hath right.**

**I**N a *Sar cui in vita*, in the *Per* and *cui*, The Tenant alledgeth an exchange of the husband, and that the Demandant agreed, and is now seised of the Lands given to his father, & *non allocatur*, without shewing a specialty, because the Tenant is not privy in blood, *P. 2. Ed. 2. cui in vita 17*. But the party or his heir may well plead the agreement to the exchange against the wife or Heir, and it shall be a good Barr, *per Newton 21 H. 6. fol. 15. A* and to this agrees, *8 Ed. 2. it n. Cant.* although the wife was not sole seised of the Lands given in exchange for her land, for which cause she shewed a Charter, by which the Land was given to her husband, her self, and a stranger, and the Deed speak nothing of the exchange, yet the Tenant averred, that she is seised of the lands given in exchange, by force of the exchange; and they were thereupon at issue; for it was said, That shee being a stranger to the Deed shewed by the Wife, she shall not be bound by it, the Writ was in the post, & *c. cui in vita 28*.

*vi. C. 4. part 1. Vernons case. acceptance of other land then of the land in demand, shall not barr a woman of her dower.*

The issue in taile shall be barred in a Formedon, if he hath agreed to the land taken by his father in exchange for that which he demands: So of the wife, *3 Ed. 3. fol. 19. exchange 11. 14 H. 5. fol. 3. Formedon 5.*

But a man shall not have exchange against a record which doth not prove it, as if the Ancestor of the Demandant, gave to his ancestor the land demanded, for release by him made of other Land, where the fine proves the gift, and speaks not of the exchange, so no consideration appears, for which he should have the one land and the other, *Trin. 16 Edw. 3. exchange 2. and 3 Edw. 3. fol. 19.*

*Green* said, That if Tenant in taile releaseth to his Disfeisor who gives him other land for this, into which the issue entreth, &c yet he shall recover also the land intailed, because he claimeth it by a title paramount, &c. So if Tenant by the curtesie maketh such release, and for it taketh other land in fee, and the heir accept thereof, yet he shall recover the other land by Mortdancester, of the seisin of his mother, because hee hath another Title by her, *Tr. 16. Ed. 3. exchange 2.*

Exchange binds an Infant if he agree at full age, and occupy the Land afterwards, &c. *M. 4. Ed. 2. exchange 3.*

Exchange shall not be averred against a simple Deed of Feoffment shewed by the other party, *H. 6 Ed. 2. exchange 12.* But *vide 3 Ed. 3. it in North.* the averment discharged, recovered against a simple Deed by him who was a stranger to the deed, *scilicet*, the Assignee, and it was sayd, he shall rebut the Heir in taile, although he shall not vouch him, and by the same reason he may plead the exchange, *Formedon 44.*



# CHALLENGE.

*Challenge to the Array, and to the Poles.*

- I. *Challenge for consanguinity to the party, or his Sons, Daughter, or Cofin, and the forme to take his Challenge.*

**I**N an Affise, the Tenant challenged a Juror, because he was Gosop to the Plaintiff, and his cofin within the degrees, and the last point was only enquired of, *Quere* for what cause, 7 H. 6 fol. 40. Challenge 23: &c.

It was held a principle Challenge to a Juror, because he was cofin to the wife of the Defendant, so as the issue of the Defendant might be heir to the Juror, 8 H. 6 fol. 15: Challenge 25. 21 Edw. 4 fol. 37. and 38.

It was held a Principall in an action by an Abbot, that the Juror is uncle to a Monk of the house, or brother: But *Newton* was absent, 28 H. 6 fol. 10. Challenge 39: where one was alledged Cofin to a Nunn of the house, and the son of the Steward of the Abbies plaintiff *In homine replegia*, 7 E. 4 fol. 4: Chal. 54: So that he is brother to a Prebend of a Chapter in an Affise by the Dean and Chapter, for it is a good plea that the Juror is one of the Chapter, and it is a good Challenge in debt by Executors, that the Juror is Cofin to the Plaintiff, and good in an action by Tenant for life, that the Juror is cofin to him in Reversion: And in the first case, if they have not goods in Common, their own goods shall be in execution, &c. And if in Trespass the Defendant justifie as servant for Rent, and hath aid, it shall be a good challenge to say, that the Juror is Cofin to his Master, yet the Master shall lose nothing, M: 21 Edw. 4 fol. 1 challenge 60, But cofin to him in reversion may be well challenged where no aid is prayed, 21 Edw. 4 fol. 37. fol. 75. vide 9 H. 7: fol. 23.

In an Action brought by the Chapter alone, cofin to the Dean, or within his Distresse, is no Challenge, but it is, where within the Distress of the Dean and Chapter, 21 Edw. 4 fol. 14.

It is a good Challenge, that the Juror is Cofin to a brother of the house, the Prior being Plaintiff in an attaint, so that the Wife of the Plaintiff is cofin to a brother there, &c. 34 lib, Ass. pla. 6 challenge 127-  
But

But in an action by a Channon or Prebend, it is no challenge that the Juror is Brother to another of the Chapter, or to the Dean, because their possessions are severall, 21 *Ed. 4. fol. 75.*

He which challengeth for cosinage, must shew how, &c. but it is not traversable, but shall be tryed only how Cofin; 7 *Ed. 4. fol. 4. challenge 54:* But of Goshipyry, he shall not shew how, *ibidem.* So where the Plaintiff saith, that the Sheriff was cosin to the wife of the Defendant, the other shall answer to the cosinage, not to the conveyance; *per Teluerton, 9 Ed. 4. fol. 6.* Otherwise it is in an action ancestrell, &c. *Sugg. 5.* but see where the tryors found the cosinage, and did not know how, the challenge was not good, *M. 33. Ed. 3. challenge 169.*

It was no challenge in an Affise, to say that the Plaintiff was near to the Arch-Bishop of *E:* and he that made the panell his Tenant, and that it was made by the devise and Counsell of the Arch-Bishop, without saying further, that they were procured to say other then the truth, 12 *lib. Ass. p. 23. challenge 10.*

It was said, if the Plaintiff and Juror be of a lineage, so that the Plaintiff is of the fourth degree, and the Juror in the first, this is a good challenge, but if they be in the first and second degree, it is no challenge, because they may intermarry: Also Bastardy in any Auncestor of the Juror after the cosinage joined, taketh away the challenge 41 *Ed. 3. fol. 9. challenge 99.* Agree of Bastards in a Juror, *M. 6. R. 2. challenge 102. 26 H. 6. challenge 163.* and 21 *Ed. 4. fol. 38. and 39. & vide 21 Ed. 4. fol. 75.* That Cofin of the ninth degree shall be a good challenge.

It was holden a good Challenge in an attainr, That the Juror was Cofin to one of the petty twelve Jurors, who is dead, because the Heire shall be charged with the Oath of his Auncestor, &c. 34 *lib. ass. p. 6. challenge 12.*

It was though in an attainr, that the Alliance and Consanguinity to the Plaintiff on his Mothers side, where the lands come on the Fathers side, and shall not discend to the Heir on the Mothers side, it is no Challenge, 40 *lib. Ass. p. 20. challenge 131:* *Vavafor* held such cosinage of the half bloud to be good cause of Challenge. 21 *Ed. 4. fol. 37.*

It is a good Challenge in an Action by a Feoffee to say, that he is cosin, *A cestui que use*, and if the issue be between the vouchee and Demandant, it is a good Challenge that the juror is Cofin to the Tenant, P. I *Ed. 4. fol. 38. and 39.*



I I. Challenge to the Array for consanguinity of the one party, where to a Monk or Citizen, in an Action by an Abbot, or Mayor and Comminalty, and so of affinity.

*Vide C. Lit.*  
157. for a rule  
Consanguinity  
to any of the  
parties, affinity  
or alliance by  
marriage, is a  
principall chal-  
lenge for favour  
*Vide 29 b. 8.*  
*Dyer 37. Plö.*  
*Com. 425.*  
*19 Eliz. Dyer*  
*317.*

IN an Assise the Array was challenged, because made by the Bailiff, who had married the Cofin of the plaintiff, and had issue, this is a principall challenge, though no default in the Bailiff, 29 lib. Ass. pla. 2. Chall. 114. 22 Ed. 4. fol. 2. but see 26 lib. Ass. pla. 21. that he ought to conclude to favour.

The Array was challenged in an Assise, because the Sheriff is Cofin to the plaintiff, the plaintiff said, that the Array was made by such a sworn Bailiff, and the Sheriff medled not with it, but returned the parcell, yet the array was quashed, but Burton said afterward, that the Array was good, 31 lib. Ass. p. 7. Challenge 149. but where the son of the plaintiff was Steward of the Franchise, and one T. Bailiff thereof (not removable by the Steward) made the Array, this was held good, 12 lib. Ass. P. 12 Chall. 9. &c.

*1 M. Dyer 91. It*  
*must be alledged*  
*that he was Co-*  
*sentempore ar-*  
*riamenti facti,*  
*otherwise it is*  
*not good.*  
*Vide C. Lit. 156*  
*b. E. 6. Dyer 78.*  
*acc*

It is a good challenge to the Array, that the Sheriff is cofin to the wife of the plaintiff, 12 H. 6. Chall. 159. &c.

In an Assise by a Prebend, it is no challenge to the Array, because made by the Bayliff of the Dean and Chapter of the same place where he is Prebend, so if he alledge the Bailiff cofin to the Dean, M. 21 Ed. 4. fol. 9. Chall. 60.

It shall be a good Challenge to the Array, that the Sheriff or Bailiff is Cofin to the plaintiff, 34 lib. Ass. P. 6. Chall. 127. but the Cofinage is not materiall if he made the parcell without any intent of favour to the plaintiff, P. 21. Ed. 4. fol. 29. and it was the under sheriff there, and the favourableness onely inquired of, Quere Suliard. the Serjeant held the contrary.

In Trespasse or Assise, where the Defendant said, that the Ancestor of the plaintiff enfeofed the Mayor and Comminalty, who made a Lease unto him for life, saving the Reversion, and the panel was quashed, because of the people of the County, 28 lib. Ass. p. 18.

*Vide 14. and*  
*15. Eliz. Dyer*  
*319.*

The Sheriff was found Cofin to the plaintiff, but in another degree then the Defendant supposed, yet the Array was quashed, P. 19. H. 8. fol. 7.

## III. Challenge to the Array or polles, because at another time they passed against him in the same point, or in another action.

**A**fter waite found against the Husband and wife, she was received and pleaded no waite done, and the Sheriff returned, the same panell that was of the former enquest, for which he was amerced and a new panel made, M. 7. Ed. 3. *Challenge 7. &c.*

In debt the plaintiff challenged a Juror, because he passed against him in an action of Debt upon the same summe, which judgement is reversed by Error, but because the record, is in the Kings bench, it is not a peremptory challenge without shewing the Record, H. 33. It. 6. fol. 1. *Chal.* 41. *vide* this is not a principall challenge without shewing the Record, but the Juror being examined, confessed that he was sworn upon the same issue before, and it was tried by the triers, whether he were favourable, 8 H. 5. fol. 11. *Chal.* 179.

In trespassse for beating his servant, the plaintiff challenged a Juror, because in a trespassse and battery, (and brought by the same servant) he passed against him, and because he shewed not the Record (as he ought in all such cases) it was held no principal Challenge, but the favour was tried, P. 11. Ri. 2. *Chal.* 106. but in maintenance it is no *Chal.* for the Defendant to alledge, that he passed with the plaintiff in the former action, because this doth not imply favour, because another point, 35 H. 6. fol. 63. *Chal.* 45. and Danby said, that it is not a principall Challenge that the Juror passed against him in an issue upon the same matter, for no man shall be challenged for his *Voyer dire*, 9 Ed. 4. fol. 16 *Chal.* 35. *vide* this reason alledged, 22 lib. *Ass.* P. 13.

A man indicted of trespassse comes by processe, and traverseth the Indictment, and challengeth a Juror because he was one of the Indictors, and held no challenge, but of felony it should be a principall Challenge, P. 7 Ed. 4. fol. 4. *Chal.* 55. 12 lib. *Ass.* P. 36.

But in conspiracy the plaintiff challenged a Juror because he was one of his Indictors, and held a principall Challenge, M. 8 H. 4. fol. 2. *Chal.* 7. but where certain men were indicted of a conspiracy, and found guilty at the suit of the King, and the party sueth a Writ of Conspiracy, and the same parcel remains against those who were indicted, and held no cause of Challenge, yet the indictment upon which the action conceived was for felony, 27 lib. *Ass.* P. 13. *Chal.* 137.

In an Assise of Oyer and Terminer, it was held no Challenge, that in the same Writ another hath pleaded, and this Juror hath passed against him, and assessed damages of which this challenger shall be charged if he be attainted, 29 lib. *Ass.* P. 3. *Chal.* 145. it seems good, because he may acquit him, although the other were found guilty.



In an Assise of Fresh force, it was found against the Plaintiff who brought a *Decies tantum*, and the Plaintiff challenged one who was sworn in the former Assise, and it seemed a principall challenge; he was also called an imbracer in this Action, H: 13. H: 4. Challenge 171.

The Inquest passeth for the Plaintiff in an *Audita querela*, and afterwards a *Venire facias* issueth to the same panell to tax damages therein, there shall be no challenge to the Poles, unless it be for some thing of later time, P. 22. Ed. 3. fol. 5. Challenge 283.

**IV.** Where the array may be challenged, because made by the party to the Action in his favour, or where at his denomination, and what shall be sayd denomination or favour.

**I**N an Assise of rent out of Land in a Franchise, the Bailiff returned the panell, and by the return it appeared, that the Bailiff himself was Plaintiff and yet none challenged the Array, but as to the poles, and some being found suspicious, all was quashed, and the Sheriff entered the Liberty, &c. and the Bailiff was not removeable, yet it had been better to have made the pannell of others, &c. M. 7. Ed. 3. fol. 56. Challenge 171. lib. Ass. P. 11. vide 21 Ed. 4. fol. 29. agreeth, where the challenge was not to the array, which was made by the under Sheriff cosin to the Plaintiff in favour of him, but the favour was enquired of, and one Juror being found to be put in for favour all was quashed, &c.

But a *Tales* made by the Sheriff being Plaintiff, it was quashit without more adoe, 8 H. 6. fol. 13.

So shall be the principall panell as it seems, 14 H. 6. fol. 2. vide *habere corpus* to another, H. 8. H. 6. fol. 31: but he himself shall not make the panell, nor serve the *Venire facias*, for this is Challenge to the array, 9 H. 6. fol. 10.

He which challengeth the array (because made favourably by the Plaintiff, Sheriff or Coroner,) it behooves him to shew his name that made it, and at what time, otherwise he shall not take advantage of it, P. 34 H. 6. challenge 69:

Array was challenged, because made at the denomination of the Plaintiffs servant, which servant is also put in the panell, and tryers chosen, and it was held, that if one juror were put in by the denomination of the Plaintiff, all shall be quashit, H. 7. H. 4. fol. 10. challenge 85. 21 Ed. 4. fol. 29. &c.

One Panell was returned upon two actions by a man, and in the one Action it was found made at the denomination of the Plaintiff, and it quashit both panells, T. 43. Ed. 3. challenge 94.

But note, if the Plaintiff comes to the Sheriff, and prayeth him to make a panell of the most able of the County, and the Sheriff demands whom he

he will have, and the plaintiff names none, but saith, that the next day he will deliver him an eschrole of 50. or 60. of the most able men, and so doth, and prayed him to return which of them he would, and the Sheriff or Bailiff returneth a pannel of them, it seems well done &c. *Ed. 3. chell. 99.*

If the Sheriff suffers the parties by consent to make a pannel, which they make &c, this is a good Array, although made at the denomination of the parties, and if two strangers make a pannel without favour of any party, and deliver it to the Sheriff who returns it, this Array shall not be challenged *M. 6. R. 2. Challenge 102.*

If it be alledged in an assise, that the Sheriffs son hath married the daughter of S. who hath purchased the Land, depending the Assise, and the pannel was made at the nomination of S. &c. and all was found, saying that the pannel was duly made, and not at the nomination of S. wherefore all was good, *H. 21. E. 3. fol. 5. chell. 112.*

Upon challenge that the Sheriff made the pannel at the nomination of the party, the Justices enquired onely whether the Sheriff had done his office without inquiry of the party, or of the nomination, *M. 22. Ed. 3. fol. 12. challenge 118.*

An Array was well made by the under Bailiff, and delivered to the head Bailiff of the liberty, who put in five Jurors at the nomination of the plaintiff, for which the whole was quashed, but if the pannel had been returned by severall Bailiffs, and one put in at nomination, the pannel of the other shall not be quashed, *28 lib. Ass. P. 22.*

An Array was challenged, because made at the denomination of the plaintiff, and not allowed because he said not, and in too much favour &c. so it seems that it ought to conclude to the favour, *28 lib. Ass. P. 23.* It was otherwise said at the first, *21 Ed. 4.* that although the inquest was indifferently made, yet it shall be quashed if at the denomination, but there afterwards the Justices changed their opinions, that it shall not be quashed without favour alledged, and an intention to help one party, and it was alledged to prove the same, that three of the Jurors at another time in an Assise with others, found for the Plaintiff against this Defendant, and that the Defendant shewed this to the under Sheriff, and prayed him that he would not impanel them &c. and they were sworn to say the truth of it, and the Array was affirmed, *H. 21. Ed. 4. fol. 74.*

## V. Challenge to the Array because made at the devise of a maintainer, or procurer, or of one who took money, or which purchased the Land.

**A**N Array quashed, because made at the devise of S. a maintainer, *12 R. 1. E. 3. challenge 113.* and so at another time awarded, *13 Ed.*



13 Ed. 3. it was alledged to be made at the request of T. a maintainer, in favour of the plaintiff, and the Tryers were charged to inquire if T. were a maintainer, and it was found that he was not, and that he inter-medled not &c. *Trin. 13 Ed. 3. challenge 108.*

An Array challenged, because made by the Bailiff of a Liberty, who was a maintainer of the quarrell &c. *Trin. 20 Ed. 3. challenge 116.* So by the Sheriff a maintainer, *P. 17 Ed. 3. fol. 50. challenge 13. &c.*

An Array challenged, because made by the Sheriff who had purchased parcell of the Land comprised within the Writ, and it was a Writ of Champerty, and because it was found that the Sheriff had purchased it of a stranger, and not of the party, the Array was quashed *M. 44 Ed. 3. fol. 38. challenge 98.*

A Juror was challenged, because he and one T. were bound one to the other, so that each of them should embrace the others quarrell, and that T. had money of the plaintiff, and gave it to the Juror &c. and it was a good challenge, *34 lib. Ass. P. 6. challenge 127.*

It is no Challenge to the Array, that one Juror is Cofin, or favourable, but good to the Array, to say, that the Sheriff put one in to the intent to be favourable, for in the Challenge of the Array the office of the Sheriff is touched onely, not the differency of the polles, *8 H. 5. fol. 5. challenge 178. 7 Ed. 3. fol. 56. challenge 2. 21 Ed. 4. fol. 29. 49 Ed. 3. fol. 1. challenge 100.*

A Juror was challenged, that he had taken of the party, and had published that the Plaintiff had right, and the Tryers found that he had taken nothing, and inquired not of that which he had published &c. because he is sworn to say the truth, otherwise if he had procured another to say so with him, *Quere M. 8 Ed. 3. fol. 69. challenge 4.* So it is no Challenge that a Juror said, that he would passe with the plaintiff, if it be not found that he said this more for favour, then for the truth of the matter, *per curiam, 20 H. 6. fol. 39. challenge 37. fol. 41. but if he said, he would passe for the one party true or false, this is favour, not so if he said this, because he had knowledge of the truth &c. P. 7 H. 6. fol. 29. challenge 22.*

A Juror was sworn, although he had said before, that he could excuse the Defendant of the disseisin &c. *12 lib. Ass. P. 12. chall. 9.*

VII. Where Challenge to the Array, or Jury in one principall, or for one, shall be a Challenge for all the principalls, and against all, and how where the one party hath lost his Challenge, and where a Challenge to an Array or parcell challengeth all.

A Writ by many *Præcipes*, one Tenant in one *Præcipes*, challengeth the panel for affinity and cause touching the Demandant, and upon

upon this found, adjudged that the panel shall be void against them all, *P. 10. Ed. 3. fol. 19. Chall. 5.*

An Abbot brought two actions of Debt against two, and severall issues tryed, and two panels returned, but the same Jurors for both, and the Array challenged in the one for nomination of the plaintiff, and upon this being found it was held that both panels should be be quashed, *T. 43 Ed. 3. Challenge 94.*

An Appeal against many who pleaded not guilty, if one *venire fac.* issued returnable for all, a peremptory Challenge for one Defendant is a challenge for all, but the plaintiff ought to sue severall *Venire fac.* and to be ayded &c. and in an Assise against three awarded by default against two, they have lost their Challenge, but if the third challenge one who is drawn, he shall be drawn against them all, and it was said, if at a Gaole-delivery the Jury be charged upon two or three, and one challengeth peremptory, the Clerk will sever the felons, because the panel is not made between any persons certain, *9 Ed. 4. fol. 27. Challenge 56.* and it was said, in the book, that if a Juror be favourable to the one plaintiff, he is favourable to them all for their joint title, but he may favour the one Defendant and not the other, and so it shall stand against him, *Quod. Quare 9 Ed. 4. fol. 27. 4. Ed. 4. fol. 1.*

*Plo. Com. 100. acc.*

See in an appeal against the principall and accessory, who pleaded not guilty, and the accessory challenged the Array, and the principall said nothing, yet it was quashed against both, *10 H. 4. fol. 5. Chall. 150. 4 H. 4. fol. 5. Chal. 157.*

*14 b. 7. 31. 18. E. 4. 3. 15 b. 7. 9. 31 b. 6. 10. acc.*

Assise against two, the one took upon him to be Tenant of parcel, and challenged a Juror, and it was taken for both, although the other would have had him sworn, *30 lib. Ass. P. 41. chall. 148.* So of two demandants, and the one would have him sworn, and the other not, for the contrariety, *10 H. 6. fol. 15. chal. 31.*

But see wherein a *Decies tantum* by three, one challenged a Juror, and the other would not, and he was sworn because the others would have him sworn, *H. 13. H. 4. chal. 171. &c.*

Note if the Inquest be awarded by the Defendant, if the plaintiff challenge any, he shall not be drawn without inquiry, and this the Justices may do *ex officio*, to the intent that right may be done, although that here the Defendant hath lost his Challenges, *2 H. 4. fol. 14. challenge 76. vide supra A. 9. Ed. 4.* where the one made default and the other challenged.

Array was duly made by the under Bailiff, and the head Bailiff put in five Jurors favourably, and returned it, and because the Array was returned by him, the whole was quashed, but where the Array is to be made by two Bailiffs, and the one makes his part favourably, the whole shall not be quashed, *28 lib. Ass. P. 22. challenge 140.*



VIII. Where Challenge to the Array or a Juror shall not be lost by Laches or Default, and how it shall be made, where the Plaintiff challengeth, and the Defendant saith nothing, and after the Plaintiff releaseth.

**T**He Demandant challenged a Juror, and when the Inquest was looked over, and when they came back to the same man, the Demandant released his Challenge; and then the Defendant challenged him, and he was held to be well done, for when he is to shew cause of his challenge, when the inquest is looked over, he comes time enough to challenge, &c. *M. 37. H. 6. fol. 8. Challenge 48. Tr. 9 Edw. 4. fol. 16. Challenge 55. per curiam.*

*M. 11. Jac. in C. B. In Symmons case, it was adjudged, when a juror is challenged by one party, who doth good cause of challenge, and afterwards he is challenged by the other party, who afterwards doth release his challenge, now he cannot be challenged to the first party because he did enfeof his time of challenge, and had admitted the party to be indifferent at the first. vi. 37. H. 8.*

But see, Where the Plaintiff challengeth one, and the Defendant challengeth another, and now the Plaintiff releaseth his Challenge, and then the Defendant would have challenged, and could not, because he made it not when the Plaintiff challenged him, *M. 8. H. 5. fol. 10. Challenge 191.* and to this agreeth *Fitzh. 27 H. 8. fol. 2.* That the Defendant who saith nothing at the first, shall not challenge him at the perusal of the pannell who was challenged before by the Plaintiff. *Englefoild contra*, and *Vafor* said, That where the Plaintiff challengeth one, and the Defendant challengeth all below, if the Plaintiff demands not their names, and takes his challenge presently after, he shall not do it when the other will release, *14 H. 7. fol. 5. vide 9 Ed. 4. Challenge 55. 7 E. 3. Contr.*

A juror once tryed and found indifferent, shall not be challenged afterwards, because he had nothing within the Hundred, *9 Ed. 4. fol. 16. Challenge 55.*

A man sworn shall not be challenged afterwards, if not for some later cause, *22 Ed. 4. fol. 1. Challenge 64.* and therefore if certificate be taken by the same inquest, there is no challenge to them, because the same inquest, and *12 H. 4. fol. 10 challenge 90.*

It was said, that the party may not release his challenge after the tryers are sworn, for if they give not their verdict it is error, *21 Ed. 4. fol. 70.* But it was otherwise done when the parties were sworn, and ready to give their verdict in affirmance of the array, the party refused his challenge, *27 H. 8. fol. 26.*

The Plaintiff shall not challenge the array because the Sheriff is his cousin, for this he did know before, and might at first have prayed process to the Coroners, otherwise it is, if he be cousin to the Defendant, &c. *T. 15. H. 7. fol. 9.*

IX. What shall be done where both parties challenge, and where the plaintiff and the Defendant challenge one by Coven, or without Coven what shall be done.

If one be challenged by the plaintiff, because he hath nothing within the Hundred, and by the Defendant for the same cause, he shall be drawn without more *ad per curiam*, 3 H. 6. fol. 38. See that in the book at large, he was alledged by the one for favour, and by the other because he had nothing within the Hundred, *ibidem* fol. 38. *vide* 36 H. 6. fol. 27. chal. 47. agreeeth by the way, but there *Prisot* said, that he shall not be drawn without making Fine for certain contempt &c. *Vide* 3. h. 6. 16 9 E. 4. 16. 37 H. 6. 8. C. Lit. 15. and diverse challenges are not accounted double.

In an attaint the Defendant challenged the *Decem* tales because made in favour, and the plaintiff challenged it without cause and quashed, P. 8 H. 4. fol. 22. challenge 8.

But see, it is said, that he who challenged by both parties, is suspected of none, and therefore may be sworn, 20 lib. Ass. P. 13.

*Præcipe* by two against one, the Tenant and one demandant challenge, another demandant prays that he may be sworn, and that the Coven may be inquired of, and it was holden it shal be for the mischief, but if it were in an appeal, he shall be drawn without inquiry of the coven, *in favorem* *vide*, 110 H. 6. f. 16. challenge 31.

In a Formedon the Tenant and voucher were at issue upon the place, and they both challenged the Array, the demandant said that it was by coven, and it was to be inquired of *per Shard*, H. 35 Ed. 3. chal. 156. M 38 H. 6. f. 6. challenge 49.

Upon a challenge that he had an action of Trespasse depending against him, the other may say, that it is by coven, if the action of Trespasse was begun depending this suit, or returnable but three or four dayes before this Writ, and it shall be tryed, M. 38 H. 6. f. 6. challenge 49 So where the Writ of maintenance bore date before this suit against the Juror by the plaintiff the Defendant may aver the coven, to the intent there should none be sworn, M. 43 Ed. 3. chal. 93. *Gokain contra*, in Trespasse if brought &c. 8 Hen. 5. f. 11. chal. 179.

A panel made by Coroners was not quashed by Challenge that it was the same panel which the under Sheriffe had returned the other Term, H. 25 Ed. 3. f. 73. challenge 121.



X. Where the Array shall be quashed by the misdemeanor of the Sheriff or Officer in a false return, or not a sufficient return, or by returning more or lesse panels then he ought.

**V**enire facias in Debt, it was returned *Mandavi Bullivo Libertatis* in C. who hath made the panel, and the *Habeas corpora* returned accordingly, and at the *Distringas* he returns, *Mandavi Bullivo Libertatis* in C. & *Libertatis Regine*, and it was challenged; *Belknap*, It may be that some of them who were impanelled in the County sold their Land there, and now have Land in the other Liberty, and if it be so the Array is good, but this cause ought to be certified by the Sheriff, and although not certified, yet the Array was awarded good, *Tr. 18. Ri. 2. challenge 176. Vide 45 lib. Ass. P. 1.*

In conspiracy at the *Venire facias*, the Sheriff returned; *Mandavi Bullivo Libertatis*, who answered and returned but four persons, because there was no more sufficient, and the Sheriff himself supplied the panel without other authority, also he himself returned the *Osto tales*, and it was held good, because the return of the Bayliff is sufficient, and shall be intended to be true, and no cause to have a *Non omittas*, so the Sheriff did well, a supply of the panel, and the array good; *M. 22 Rich. 2. chal. 177. But vide 8 H. 4. f. 17.* Where the Sheriff returned that the Bayliff had served the panel, but not the *Osto tales*, because there were no more sufficient, and it was holden that the Sheriff now ought to make the whole panel and the *Osto tales*, and because the Bailiff made parcell, the whole was quashd, and a *Non omittas* awarded, *Inquest 32.*

Return made by a Sheriff which is now removed is void, if the panel were not made before, *Ec. 43 lib. Ass. p. 22.*

Note, That if a Bayliff make a panel or part of it, and the Sheriff return it, as made by himself, the array shall be quashd, for otherwise the party should lose his challenge *Ec. 17 Ed. 3. fol. 50. chal. 13. 17. Ass. p. 11. 8 Ed. 3. f. 22. 8 Ass. p. 9.*

Issue upon counterplea of recit, the Sheriff returns the panel with the *Venire facias* at the suit of the Plaintiff, and also four other Writs with panels, by the procurement of the Prayee, and the array was quashd for suspicion, because the Court did not know that the panel was duly made, and a new *venire facias* awarded, and the Sheriff amerced for returning two panels to one originall, *T. 5. Edw. 3. chal. 6.*

Array was also quashd, and process to the Coroners who returned a panel, and was challenged, because no Hundredors in it, and it was surmised that there was none who was not of the fee of the Plaintiff, and those of the Hundred adjoining, and it was said that yet it shall be quashd, for that cause,

cause, not contained in the return, but the array is good, because it is found good cause by the tryers, 45 lib. Ass. p. 1. Challenge 123 R. 2.

A Bailiff returned others then those which he made to have the view, but the under-Bailiff confessed it, and he was compelled to put in those which were of the view, but this was done by a *Non omittas* to the Sheriff, and the Bailiff not amerced because absent, 41 lib. Ass. P. 26. challenge 166.

XI. Challenge to the Array, because it was not by the Bayliff of the Liberty, or Guild, or the Sheriff where he ought, &c. or because the Sheriff had made it, where the Bayliff of a Liberty ought, or the Bayliff returns those of the Guild.

AN Affise of Nusans levied in D. to his Freehold in C. where D. and C. are severall Liberties, and the Sheriff himself serves the Writ all of the one, where both have full return &c. and it was held nought, and the Array quashed, because not made by both Bailiffs, and the Jurors ought to have view of both lands, and this by the commandement of both bailiffs. Also Herle sayd, Where the Sheriff enters a Liberty, and makes a panel, he ought not to return it as made by him but by the Bailiff, but the liberty being seised into the Kings hands, it seems that the Sheriff may well make the return, for now he doth all as baylif, 8 Ed. 3. fol. 22. chal. 3. 30 lib. Ass. P. 42.

The Sheriff returns a panell in E. where the Land is in D. and C. two wapentakes guildable, and the array quashed, because none of D. was returned, 28 lib. Ass. p. 38. challenge 141

An Affise in three towns, the Sheriff commands the bayliff of a Liberty that he serve all the panell, where the one town is out of the Liberty, and judgement was affirmed in error, 3 H. 4. fol. 6.

The Sheriff returned *Mandavi ballivo*, of T. who hath returned this panell where S. had also a full liberey within the liberty of T: to which the bayliff of T. ought to send it, because the Land is in the liberty of S. and because it was not so done, nor so returned, the array was quashed, the bailiff was also alledged to be favourable, and both found, P. 32, Ed. 3. challenge 111.

In a *Mortdancester*, the array was quashed, because the bailiff returned some who were of the Guild, &c. and if parcell of the Land be in a Liberty, and parcell in the Guild, they of the Guild shall be returned by the Sheriff, but those which were impannelled were not taken away, 32. lib. Assise P. 6. challenge 125. Quere, why they shall not.



not be put out, *Trin. 32. Ed. 3. challenge 110.* but see that where the Sheriff returns men of the liberty it is good, *30 lib. Ass. P. 5. &c.*

Upon an indictment of Rape, because the King is party, it was holden the Sheriff might enter the Liberty to serve a Writ, and not to send it to the Bailiff, and for an ill return of the Bailiff the Sheriff was amerced, because he made not the panel himself, because there is no liberty against the King, *38 lib. Ass. P. 19. chall. 129.*

A Bailiff of a fee shewed that he had made a panel, and the Sheriff had made another of himself, to the destruction of his Bailiffwick: this is not in the Case of the Statute, because not Bailiff of the Guild. *Shard.* though he were Bailiff of the liberty, the panel shal not be quashed, but you may bring your action against the Sheriff if you will, *30 lib. Ass. P. 1. chall. 147. Vide agreeing, M. 11 H. 4. fol. 9.* that the execution of a Writ done by the Sheriff within a Liberty is good, and the Lord is put to his action against him, but that which the Bailiff did out of his Liberty is void, and of this see *5 Ed. 3. f. 26. and 8 Ed. 3. f. 3. vide Divis. 10. P. 22 R. 2.* the Bailiff made parcell.

In an assise of Common in *D.* appurtenant to his Freehold in *S.* the Array was challenged, because *D.* is within the Liberty of *E.* and the Sheriff hath returned the whole panel of Forrainers, and because it was surmised that both the Towns were in one Wapentake, and the Sheriff made his Warrant to the Bailiff, who returned 6. which the Sheriff seeing to be suspicious put them out, and made the whole himself, whereby the Array was good, and the Assise taken, although it was said that he ought to have put in those which were returned by the Bailiff, and should be ousted afterwards by challenge, but the reason was because perhaps all within the Liberty were suspicious, *H. 11. Ed. 3. Verdict 25.*

The son of the plaintiff was Stevvard of a Liberty, and the panel made by the Bailiff there not being removable, and the Array was held good, *12 Ass. P. 12. challenge 9.*

**XII.** Challenge to the Array or polles, because he who made it is Attorney, or of Counsail, or see with the party, or being made by the Bailiff or under Sheriff, shall be a Challenge, because the Sheriff is of the Conncell &c.

**I**N Assise the Array was challenged, because made by the Bailiff of *A.* who is in Livery and fee of the Defendant, and not allowed without shewing that he is of his counsell, as well of a thing touching his office, as in other things, but the judgement was reversed afterwards, because the Challenge was not allowed, *8 lib. Ass. P. 13. Challenge 7.*

Of a Challenge that the Juror is Bailiff and hath fee, or is servant to the

the party &c. *vide Divis. 16. 21 E. 4. & 14 H. 7.* but it is no challenge, that the Juror is keeper of a forrest, and the plaintiff Master of the Game, *M. 29 Eliz. in Co. 1. B. In an attain by Hodie a gainst winchcomb, one of the grand Jury was challenged because he was a Captain and one of the petty Jury was his Lieutenant and holden no cause of challenge, and so it was alledged where one of the Jurors was Master of the Game and one of the petty Jury was keeper of his Park.*

Array quashed, if the Sheriff hath robes &c. although it was duly made by the Bailiff, the Sheriff not knowing &c. for it shall be intended favourable, *44 lib. Ass. p. 18 Ch. 89. 44 Ed. 3. f. 44.* agreeth, where the Sheriff was Cosin, and the Bailiff made the return, *31 lib. Ass. p. 7. Ch. 149.* So where the under Bailiff makes it duly, and after the head Bailiff puts in five by procurement, the whole was quashed, although he returned the others as they were duly put in by the under Bailiff, because it is favourable, *28 lib. Ass. p. 22. Ch. 140.* and upon Challenge, because the Sheriff hath robes, where it was shewed that the Bailiff of the Liberty made the panel duly, yet it was onely inquired, whether the Sheriff had robes &c. *M. 22 Ed. 3. f. 12. challenge 117.*

*Vide Divis. 2. A. 12.* Assise challenged because the son of the plaintiff, Steward or Bailiff made it, yet good, and it seems so, because the Steward did not return the panel, but the Bailiff &c.

The Array shall not be challenged, because the under Sheriff hath robes of the plaintiff, if the Sheriff make another Deputy who returns it, *26 lib. Ass. p. 56. Ch. 136.* So if a Bailiff of the fee made it, and not the under Sheriff, nor the Sheriff, *M. 12 Ed. 3. Ch. 114. 12. Ass. p. 36.* but it shall be a good challenge that the under Sheriff being partiall or not, the one made it, although that the Sheriff be indifferent, *M. 24 Ed. 3. fol. 37. Ch. 120. Divis. 13. B.*

Dean and Chapter made a Lease to a Chanon of a Pool, and in Nuisance against him, the Bailiff of the Dean and Chapter made the panel, and it was said, that he shall not be challenged, although the Dean and Chapter themselves were parties without assigning default in the Bailiff, *P. Ed. 3. fol. 23.*

The plaintiff being Sheriff of the fee, and R. his under Sheriff, and had his robes and of his fee, for which the Assise was quashed, although the under Sheriff was sworn, and amerced as Sheriff, and it was affirmed in error, *9 lib. Ass. p. 8. challenge 8.*

Array challenged because favourably made by S. under Sheriff it vvas alledged that he vvas not under Sheriff at the time &c. yet it vvas inquired whether favourably made, *P. 22 Ed. 4. challenge 61.*

It vvas held no principal Challenge in an attain, that the under Sheriff vwho made the Array vvas attorney for the plaintiff, in the first action, because his authority ended in the judgement, so to say that he is of his Council novv, for it cannot be intended that he vvill be corrupt vvithout alledging of it, *7 H. 7. fol. 10. challenge 66.*

A Juror vwell challenged, because being of Council vvith the plaintiff, *3 H. 6. fol. 24. Ch. 16.* and a Juror challenged, because the plaintiff is of his Council, and hath an annuall fee, good, *2 H. 4. fol. 13. challenge 75.*



XIII. Challenge to the Array, or to the polles, because the plaintiff hath Action &c. or because he hath action against the party.

It is no challenge to the Array, that the Sheriff who made it hath an action of Debt depending against the party, if he alledge not other malice, but it seems good if that the Defendant hath an action of Debt against the Sheriff or Coroner who made it, and it was tryed by Tryers without shewing the Record, and so is the use, *Hank. contra M.* 11 H. 4. *Chall.* 86. but it is a good Challenge that the Sheriff hath an action of Battery against the Defendant, 11 H. 4. and it seems good cause of Challenge, that the party hath an action of Trespasse against the Juror, if it be not by coven, 38 H. 6. *fol. 6. chal.* 49. So if he have an action of Maintenance depending against the Juror: So if the Juror hath Trespasse or appeal against the party, 21 Ed. 4. *f. 14. per Starkey*, and it seems he ought to shew the Record, or if it be in the same Court to shew the time and Term, 43 Ed. 3. *chal.* 93. but *Stamford* saith, that this used to be tryed by Tryers, 11 H. 4. *fol. 26. challenge* 87.

In an attain, the Defendant challenged one of the Jury, because he and one of the petty Jury were at debate, and the Challenge tryed, and found it was no cause, H. 32. Ed. 3. *chal.* 109.

The under Sheriff of *Middlesex* made an Array by the command of the Sheriff of *London*, and the Sheriff returned, it shall be a good challenge, that the under Sheriff and Tenant are at debate, because the under Sheriff killed his servant, M. 24. Ed. 3. *f. 37. Chal.* 120.

A Juror challenged in an Assise, because he indicted him of Felony, 12 lib. *Ass. p.* 36. *chall.* 11. so because he had indicted him of the same Trespasse whereof the action is brought, M. 10. H. 7. *fol.* 11.

The Defendant challenged a Juror, for that he himself sued him at the Court of *Rome* upon a debate betwixt &c. *Thorp*, this lieth not in his mouth because his own suit, but the Court may inquire if the Juror hath done him any Trespasse, M. 38 Ed. 3. *fol. 25. chal.* 92.

XIV. What Challenge shall be to the Array, and not to the Jurors, and what to the Jurors and to the Array.

Challenge, that a man is put in to the panel at the denomination of the party, is to the Array onely, and therefore if he have accepted the Array for good, he shall not challenge any Juror for this cause, H. 49 Ed. 3. *fol. 1. chal.* 100. 21 Ed. 4. *f.* 29.

It shall be no challenge to the Array, but to the polles, that Tenant

or Cosin of the plaintiff is put in the panell, *H.9 H.6.fol.65.M.14.H.7 fol.1.*

*Vide all the Divis before for this matter.*

XV. *Where Challenge may be for affinity to the party or to his kinsman, or alley of the party, and how it may be pleaded, and for Gossiphood.*

**A** Juror was challenged, because he is Gossip to the party, and the party to him, and it was found that it was no cause, *10 H.6.fol.24. Challenge 40.* But the Justices would not enquire whether the Juror were Godfather to the Plaintiff, and so it seems no challenge, *Tr.7.H.6.fol.40 Challenge 23.* and so agreeth *40 lib. Ass.p.20. challenge 131.* But it was holden otherwise, *M.2.H.4.fol.15. Challenge 77.* because to be a Godfather is affinity, but although Gossip, Cosin or Tenant, it shall not be material, nor traversable, although that he shew it, *P.7.Ed.4.fol.5.* It is a good challenge that the Juror hath taken the child of the Plaintiff, *Ad sacram fontem,* and a principall challenge for the affinity, *p.19 H.6.fol.66. challenge 34. 4 Ed.4.fol.11. challenge 51*

And upon a challenge, that the Sheriff who made the panell was at the baptisme of the son of the Plaintiff, he needs not to aver the life of the sonn, but it was where the challenge was, because the plaintiff hath married the cosin of the Sheriff, *10 H.7.fol.7. contra, M.20 H.6.fol.42.* and that it is all one, but of the alliance, it seems that he ought to aver the life of the cosin or daughter, *M.10 H.4 fol. 4.* but the challenge is good if shee had issue though shee be now dead, *p.22 Ed.4.fol.2.* and it shall be alledged, *29 lib. Ass pla 3.* but this was surmised of the other party, *14 H 7 fol.2.* but it was sayd it was no challenge that the Sheriff hath married the cosin of the party, *12 lib. ass.p.36. challenge 114. 26 lib. Ass.p.21. contra, 22 Ed.4.fol.2.* where his issue to the party might inherit.

Note that it is no principall challenge, that the son of the Juror hath married the Daughter of the Party, &c. but that the Juror hath married the daughter of the party, or *e contra* is principall challenge without more ado, *3 Ed.4.fol.12. challenge 50. 21 Ed 4.fol.75.*

One of the grand Jury in an attaint, and one of the petty Jury, had married two sisters, and he said further, that he was procured, yet he shall be sworn, if the procurement be not found, *43 Ed. 3. challenge 93.* and that the Juror had married the sister of the wife of one of the petty Jury, is no principall challenge, *43. lib. Ass. p 25. challenge 103.*

In an attaint, some were challenged, because their wives who had cosins in the house of the Prior, the Plaintiff, *34 lib. Ass.p. 6. challenge 127.*

The array was quasht in an attaint, because the Brother of the Defendants



dants wife had married the Daughter of the Sheriff, but it was held no principall challenge, *per Butler*, and *Constable*, 25 H.7. fol.9. challenge 173. but he ought to alledge the life of the brother and the daughter of the sheriff.

It is a good challenge to the Array, that the sheriff hath married my great Aunts Daughter, if they had issue alive, 22 Ed. 4. fol.2 *ut supra B.*

XVI. Challenge to a Juror, who is within the Distresse of the party, or because the party is within the Distresse of the Juror, or where, because within the Distresse of the Sheriff, and where otherwise.

**T**He array was challenged, because the plaintiff hath married the niece of C. and he who made it is Tenant to C. and the array made by the Councill of C. and not allowed without alledging a speciall procurement, because C. is a stranger, 12 lib. Aff. p.3. challenge 10. 15 Ed.4. fol.18. agreeeth, but in Trespass, the Defendant sayd, that the Freehold belongs to C. and that by his commandement &c. this seems by many a principall challenge to say, that the Juror is within the distresse of C. and if he hath sayd, it was clear, as upon issue by Tenant by receipt, it is a good challenge that the Juror is within the distresse of the tenant for life, 10 Ed. 4. fol.12. challenge 58. But it seems to be no challenge untill the Master joyne, for upon suggestion that the sheriff is within the distresse of the Master, he shall not have processe to the Coroners before that he joyne, *Quare* as if he challenge. that the Juror is within the distresse of the Feoffor of the plaintiff, 9 H.7. fol.23. *contra per curiam*, 15 Ed.4. fol.18.

In account, a Juror was challenged because Tenant to the Defendant, and it was found upon examination that he was enfeofed to anothers use of Lands holden of the Defendant, and that he had done fealty, whereupon he was drawn, which he should not have been, if he had not done fealty, *Per Martin*, P.3. H.6. Challenge 19.

In a *Quare impedit* against two, the one made default, the other at issue with the Plaintiff, challenged a Juror, because Tenant to his companion, and held no principall challenge without concluding to favour, because the Action is also against his Companion, P.3. H.6. Challenge 17.

A Juror was challenged because within the distresse of the Plaintiff, and some found free Tenants, and some within the Distresse, as Tenants at Will, and was drawn, 36 H.6. challenge 46.

But in account upon such a Challenge, found that the Defendant leased Land to the Juror for the term of anothers life, and that he

for whose life &c. was dead &c. but the Cora of the Iuror was yet growing, and because there were many Iurors, he was commanded to go from the Bar for a time, 4 H.6. fol.25. Chal.20. vide *Execution Divis.* 2. but where the Plaintiff hath a Lease of the Ward of Land during nonage &c. rendring Rent to the Iuror, who hath granted over his estate, he was drawn the term continuing, because the plaintiff may have an action of Debt against him, *per Knivet*, 44 Ed. 3. fol.5. Chal.97.

It is a good Challenge, that the Iuror is within the Distresse of the plaintiff or Defendant, or within his Leet or Hundred, and if he hath Freehold in his own Right, or in right of his wife, or by *Cestuy que use*, 2 Eliz. Dyer 175. 3 b.6. 39.10 E.4.12. 15 E.4.C. 8. Lit.157.466.

Or if he hold by Feoffment to the use of the Plaintiff, its holden a principall Challenge *per curiam*, and if one be enfeoffed to the use of a Iuror of Land holden of the plaintiff, it is a principal Challenge by *Babington*, H.9 H.6. fol. chal. 27. agreeth of the Leet, and Hundred, because within his distresse, M.38. Ed.3. fol.25. chal.92.

And upon a Challenge, because within the distresse &c. the Iuror confessed that he holds of one F. as of his Mannor, who holds the Mannor over of the Plaintiff, and because the plaintiff might there distrain, this was held a principall Challenge, P.22. Ed.4. chal.61. M.38. Ed.3. fol.25. challenge 92.

It is a good challenge in an attaint, that the Juror is servant, or within the distresse of one of the petit Jury, either to the Plaintiff or Defendant, because under his correction, but *Quare* of the Challenge, that one of the petit Jury is Bailiff of the Mannor of one of the Grand Jurors, but it is a principall Challenge in an attaint, that one of the petit twelve is tenant, and within the Distresse of one of the Grand Jury, because the Land shall be destroyed, but it is no challenge that the plaintiff is within the Distresse of the Grand Juror, *ut dicitur* M. 22. Ed.4. fol.1. Chal. 64. and it was holden a principall challenge if the Grand Juror hold of one of the petit Jurors, and that the plaintiff is Bailiff, and hath fee, or servant to the Juror is no challenge, but it shall be a good Challenge; *à contra per Read*, *Pineux* and *Keble*, M. 14 H. 7. fol. 2. 86 no Challenge, that the Defendant is within the Distresse of the Juror, *ibidem*, but *vide concess.* that is no principall challenge, that one of the petit Jury was within the Distresse of one of the Grand Jury, M.21 H.7. fol.37.48. which it is, if one of the Grand Iurors holdeth of one of the petit twelve, *ibidem*.

Tenant by receipt voucheth, and are at issue upon the Counterplea, and a Iuror challenged, because within Distresse of the Vouchee, & *non al-locatur*, but if he had been within the Distresse of terr-tenant, this is a question, M.7 H.4. fol.1. Challenge 84.

But where Tenant by receipt joyns the issue, it shall be a good Challenge, that the Iuror is within the Distresse of the Tenant for life, 10 Ed. 4. fol.12.

It is no Challenge, that the plaintiff is within the Distresse of the Sheriff, G g 2



riff, without shewing favour, but it shall be good; *e contra*, 27 lib. Ass. 7. 28. Chal. 138. It is a good challenge to the Array, that the Sheriff is Tenant to the Defendant, but not if he hath sold the Land before &c. T. 11. H. 7. fol. 9. T. 20. H. 6. fol. 42.

XVII. Challenge for the Hundred, and where and when he may challenge, and where Hundreds or Rapes or Wapentakes.

Note concerning Challenges for Hundred these Rules, C. Lit. 158.  
1. For action real or personal, if two hundredors appear, it is sufficient.

One challenged by both parties, because he had nothing within the Hundred, he was drawn, 3 H. 6. fol. 38. Challenge 18. and upon such Challenge, tryers shall not try if he dwell within the Hundred, nor of what value his Land there is, but onely whether he hath any thing within the Hundred, 9 H. 6. fol. 66. Chal. 26. But it was said, if he dwells within the Hundred, that he shall be sworn, whether he hath nor any thing within the Hundred, and if he hath, he shall also be sworn, although he dwelleth not there, 21 Ed. 4. fol. 89.

2. They ought to panel freeholders in the hundred or dwell here. 3. If there be severall hundreds within a Leet, if they come out of any of the hundreds, it is sufficient. 4. If one of the parties be Lord of the hundred, if the Jury be de corpore Comitatus it is sufficient, if a hundred sell his Land, it is waste of Challenge, for his Notice is the point materiall. 5. He who is challenged for hundred must shew in what hundred.

See the Statute, Anno 35 H. 8. cap. 6. willeth that fix Hundredors be returned in every panel.

He seems to be a good Hundredor, who hath any thing within a Rape, which hath divers Hundreds, and all there sworn together twice a year, although he hath nothing in the same Hundred &c. not so, if he do not suit at the Rape, but at another Leet, 10 Hen. 6. fol. 5. Challenge 8. But although that the Rape be a Liberty, and they all within it, yet if they be sworn at two severall Leets, and not at one &c. the Challenge shall be good. M. 11. H. 4. fol. 3. Challenge 86.

After that four are sworn which are within the Hundred, it is no challenge that another hath not &c. *per Curiam*, 19 H. 6. fol. 9. Challenge 32. and upon this Challenge the tryers said, that there were five of the Hundred, and thereupon he was sworn, M. 2. H. 4. fol. 6. Challenge 74. and four Hundredors were enow, as well in an attaint, as in an other action, 7 H. 4. fol. 47. Challenge 82. and it sufficeth to have two of one County, and two of another where the issue is in two Counties, *per Curiam*, 11. H. 4. fol. 63. Chal. 88.

In an Annuity, seisin alledged in one Hundred, and the Church in another &c. and the third juror challenged, because he had nothing in the Hundred where the Church was, *non allocatur*, if he had where the seisin &c.

&c. P. 20. H. 6. fol. 23. Challenge 35. and it sufficeth to have two Hundredors where the Church, and two where the seisin was alledged, and 20 H. 6. fol. 25.

It is a good answer against this Challenge, that he was sworn before, the other saith, that he had sold his Land, yet it seemed afterwards that he shal be sworn, for this Challenge is onely for want of notice, and it stayed because after the sale *per curiam*, but it seems that he might say, that the Land is devested by course of Law, *Quare* the reason, it seems all one, 21 H. 6. fol. 69. challenge 68. and in attaint, he which had Land at the time of the panel made and sold it after, was sworn, M. 14 H. 7. fol. 2. Otherwise it is of him who is challenged, because he hath not sufficient freehold generally, 12 H. 7. fol. 4. Divis. 8.

An inquest comes ready to passe against 7. who hath aid of the King, and they all were severally challenged, because they had nothing within the Hundred, and found two onely of the Hundred not impanelled, whereof the one came not, and because they were of the next Hundred, and the most able Knights of the County, and there were no more Knights within the Hundred, and the King a party, the Array was not quashed, but an *est*o sales of the Hundred granted; *Quare* if the King were not party, Trin. 25 Ed. 3. fol. 25. Chal. 122.

An Array made by the Coroners was challenged because there was none of the Hundred, and the Justices said, if there be none sufficient there, nor out of the fee of the party, and for that reason they return the Jury of the next Hundred, this ought to appear by the return of the Sheriff or Coroners, yet it being found by the Tryers, that there were none sufficient there, the Array was affirmed, 45 lib. Ass. P. 1. Chal. 123. Vide Divis. 24.

An Assise in two Towns, in two severall Wapentakes, and no Juror of the one Wapentake put in, whereby the Array was quashed, although both guildable, 28 lib. Ass. P. 38. challenge 141.

An Array challenged, and six Tryers chosen by assent, and it was confessed by both, that there none of the Hundred but onely the six Tryers, and they shall not be challenged before that two be sworn of the principall panell, and afterwards by consent the inquest remained for want of Hundredors, and after this by the Court, the party had Challenge to the polles. Copley, the entry is, *quod quidam venerunt & quidam non, & comparentes non habent* within the Hundred, nor there dwelled without naming them, so it seems he challenged them not again, *Quare* of this obscure reason, T. 22. Ed. 4. challenge 62.

A Juror once tried indifferent shall not be challenged afterwards, because he hath not within the Hundred, Tr. 9 Ed. 4. f. 16. chal. 55. 27 H. 8. fol. 31.

Where the Countrey is to come of the body of the County, it is no Challenge to the Juror that he hath nothing within the Hundred, for no place is limited from whence the Countrey shall come, 8 H. 6. fol. 34.



If a Juror hath nothing within the Hundred, but within a *Leet* to which the Hundred comes together, it is sufficient, 19 *Ed. 4. fol. 5.*

**XVIII.** *Challenge for insufficiency, and what shall be said to be insufficient, and where Cestuy que use.*

**I**N a Replevin where the Avowry is for Rent, it shall be good Challenge, that the Juror cannot expend 40 s. but not if he avow for damage feasant, but *Fitzb.* thinks it all one, 4 *H. 6. fol. 21.* and holden a good Challenge where one avoweth for damage feasant, 7 *H. 6. fol. 25. Chal. 22.* and 10 *H. 7. fol. 14.* but contrary 16 *H. 7. fol. 14.*

Also this is a good Challenge, when the issue is upon the misnomer of a Town, 10 *H. 6. fol. 8. Chal. 30.* and where the issue is *hors de son fee*, 9 *H. 7. fol. 1. &c.*

But in a detinue of an Obligation of 40 s. and declares to the damage of 40 s. it is sufficient if the Juror have 20 s. or a Mark, for this is not to recover the summe but the writing, 10 *H. 6. fol. 7. Chal. 29.*

In an Action reall to the damage of 20 Marks, the Juror ought to have 40 s. Land, *M. 10 H. 6. fol. 8.*

In debt or trespassse if the debt or damage amount not to 40 s. it sufficeth that the Juror have one Mark of Land, *M. 19. H. 6. fol. 9. Chal. 32. anno 2 H. 5. cap. 3.* but if the debt be but 20 l. and he declare for 20 l. damages, the Juror ought to have 40 s. Land by the Statute, *P. 9 H. 5. fol. 3. Chall. 71.* So in trespassse upon the Statute to the damage of 40 Mark, *H. 10 H. 7. fol. 14.*

In an attaint the Juror ought to have 20 l. a year Land, if it be not in Burroughs or Cities by the Statute, *anno 15 H. 6. cap.* and it is intended as well of Cities which are Counties in themselves, as of others, *M. 12. Ed. 4. fol. 13. chal. 59.* and see where a Juror hath 20 l. land, but had not sued his Livery of the King, yet adjudged sufficient, *M. 20 H. 7. fol. 3.*

A Juror being examined, said, that he could spend but 5 s. but the tryers said that he was sufficient, whereupon he was sworn, *M 3 H. 4. fol. 4. chal. 78.*

A Juror was challenged because he had not sufficient, and it was found that T. was seised for life, the reversion to the wife of the Juror, and T. leased his estate to the husband and his wife for Rent with condition to reenter, and held a good Challenge &c. 7 *H. 4. fol. 1.*

A Juror challenged because he had sold his Land after that he was impanelled, so that he had not now. *Vavasor*, yet the land shall be bound to issues, because alienation is his own act, but if he hath Land in right of his wife, or for the life of another, and the wife or *Cestuy que vie* die after the impanelment, he shall not be sworn, because it is the act of God, and the Land

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Land is not liable to issues. *Davers and Wood*, he shall not be charged to attain in the Land, and this Challenge is given, because men who have Land, will the more often say the truth for their safeguard, but grant them that the issues may be levied on the alienee &c. but sithence it appeared that he had not aliened, but bargained his Land, therefore he was sworn, *Ideo quare M.12 H.7. fol. 4.*

A Iuror shall not be charged for Land which is ancient demesne, but for his Charter Land which he hath for life in his own right, or in the right of his wife &c. within the County, *M.9 H.7 fol. 1.*

Also enquiry shall be whether any be seised to his use whereof he takes the profit, *H.9.H.6. challenge 27.*

Where the damages were 40 Marks, the Roll was rased and made 39 Marks, yet the Challenge good that the Iuror had not 40 s. Land, *M.18 Ed.4. fol. 13.*

There shall not be a Challenge to a Iuror in *London* that he hath nothing in the Ward by the Statute *de anno 7 H.7. cap. 4.*

In an accompt of the receipt of 100 l. to the damage of 100 l. it is no Challenge that he hath not 40s. Land &c. *10 H. 6 fol. 19.*

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### XIX. Challenge, where the King is party to the action.

**I**N a *Quare impedit* by the King against two, the one challenged a Juror, because he was of the Livery of the King, *Non allocatur*, because he concludes not to favour, *P. 3. H. 6. challenge 17.* But see upon traverse of an office, holden no challenge to the array, that the Sheriff favours the King more then the party, for so he ought to do, but some said that it is a good challenge, that the Sheriff was a waiter at the Kings Coronation, or other such manuell servant, *M.22 Ed 4. challenge 63. vide* accordingly of the speciall matter, *4 H. 7. fol. 8. challenge 65.* and that he was but a servant, and favourable, is no Challenge to the Array, *4: H. 7. fol. 3.*

And against the King, a man may not challenge generally, but specially as that the Sheriff is his adversary, and such are granted, *4 H. 7. fol. 8.* But in the book, one did challenge a Juror against the King, and shewed no cause untill the pannell was all over perused, as in the case of a common person, *M.6. Rich. 2. challenge 105.* But see, *38 lib. Al. p. 22. challenge 126.* he was put to shew cause in certain, because the King was a party.

It shall be a good challenge for the King in an information, that the array is favourable; without shewing any speciall matter, *4 H. 7. fol. 8. challenge 65.* and see there, that after the array affirmed, the King challenged for another cause, &c.

Upon an indictment of champerty, the King did challenge the array, because the Sheriff had purchased parcell of the land of a stranger, where-  
upon



upon the array was quashd, 44 *Ed. 3. fol. 38. challenge 98.*

In an Assise of a Bailiwick, by an Abbot, the *Distingas* traversed, because the Office is amortized. *Shard*, this inquest is at the charge of the parties, and is not *Quale jus*, and the King is not party, also the Office is not amortized, *Tr. 16. Ed. 3. challenge 107.* But if it be found for the Abbot in right against T. and a Writ awarded to inquire of the collusion, the King shall not challenge, because the Jurors are Tenants to T, for his right is now in question, *Hil. 34. Ed. 3. challenge 175.*

The array was quashd, between the King and others, because the Jurors were not sufficient, although it was sayd, that where the King is party no challenge shall be to the array, for the party, and the array quashd by the examination of the Justices, 38 *lib. Assise p. 19. challenge 129.*

If a man outlawed for felony, saith, that he was so sick at the time that he could not, &c. and the King hath the reversion, the party shall have his challenges, The same Law is, if a man who abjures, saith that he was taken out of the way, &c. *M. 4. H. 5. challenge 153. M. 11. R. 2. challenge 166.*

A Commission to enquire of Nufans in *Thames*: to the Nufans of the City of *London*, there was no challenge to the array that it was made by the Sheriff of *London*, because the King is a party, and it is his suit, *T. 9. Ed. 3. Bar. 279.*

In an Assise by an Abbot, the King challenged not, because the Bailiff of Dean made the array, because he is not party to this Action, although he claims Mortmain, *T. 16. Ed. 3. challenge 107.*

Against the King, the party shewed that the Sheriff is his cosin, and prays process to the Coroners, yet although the Kings Serjeants did not confess it, whereby process was awarded to the Sheriff, the King shall not challenge afterwards for that cause, but well for another, *H. 4 H. 7. fol. 3. Lige.*

**XX.** *Challenge after Challenge tryed or adjudged Nul. and Challenge to the array after it was affirmed, or after Challenge to the Polles, and where, and when one shall challenge peremptory.*

**I**N a Replevin, one tryed sufficient for his free-hold, was challenged afterwards for favour, 7 *H. 6. fol. 25. challenge 22.* but challenged for favour and found indifferent, he may not be challengeed afterwards, because he hath nothing in the Hundred, 9 *Ed. 4. fol. 16. challenge 55.*

But in a *Juris utrum*, one was challenged who had not the view after the Writ, *Belknap*, this is no challenge, because he had seen the land, and did know it before, whereby he was ousted, and challenged again, because Cosin, and that was tried, *M. 6. R. 2. challenge 102.*

A Juror

A Juror was challenged, because the Defendant confessed that he was joint-tenant with them, in whose right he is justified, and it was held no challenge, without concluding to favour, wherefore he sayd so, and likewise that he is not sufficient, and because the Juror is not party, nor any freehold is to be recovered, it is no principall challenge. *Quare*, for in the book at large he was drawn, p. 7 H. 6. fol. 47. challenge 34.

That a Bailif hath no robes, is no challenge, but good if he saith further that he is of his counsell, and hee was received to say so, 8 lib. *Affise*. p. 23, challenge 7.

A Juror was challenged and found indifferent, he was called for and appeared not, whereupon both parties challenged him to have him drawn, and he was not, because he had made contempt, but was fined for not appearing, 36 H. 6. fol. 27 challenge 17.

*Vide Divis.* 8. Where the one releaseth his challenge, and then the other makes challenge, and it was there said, if a man be arraigned upon indictment of felony, and challenge all the Jurors by reason, when the panell is read through he might challenge all peremptory and relinquish the cause, M. 37 H. 6. fol. 8. Challenge 48. But see in an appeal where hee challenged one because he was procured, and it was found he was not, he may not challenge that Juror peremptory, but might at the beginning H. 10 H. 4. fol. 9. Challenge 180. *Vide infra*, C. 9. H. 5. Tr. 14. H. 7.

A man being arraigned, challenged thirty six peremptory, and was hanged, H. 3 H. 7. fol. 2. *Coron.* 56. yet 3 H. 7. fol. 12, challenge 51. it was held so, in the time of Ed. 4. that he which challenged thirty six, should be put to his pennance, &c.

In an appeal, it was holden, that he who is sworn before upon the same panel, which remains for default of Jurors, shall not be challenged peremptory afterwards, nor without new cause, &c. 9 H. 5. fol. 7. challenge 72: But the contrary was holden by *Fineax*, because peremptory challenge implieth cause, unless the other challenge were at the same day that the peremptory was, &c. 14 H. 7. fol. 19.

In an appeal against many, a peremptory challenge by one, was allowed for the others, and then the Plaintiff challenged the array, and where he had but one *Veni facias* before, he now prayed to have severall *Veni facias*, T. 9 Ed. 4. fol. 27. challenge 56.

Array remains for default of Hundredors by consent, where none were of the Hundred but the Tryers, and the Court thought afterwards the parties should have their challenge to the polles. But *Copley* held the polles affirmed upon such matter, because the entry doth not name the Jurors, when they remain, *vide librum*, also there were six tryers, where there need to be but two. So four Hundredors besides them, wherefore it should be error to suffer the Array to remain, *per Chok.* But *Brian* said it is well done, for the names of the Jurors are not entred, be the Array quait or affirmed, and the Array is affirmed when it remains for such cause, 42. 21 Ed. 4. fol. 76. and Trm. 22 Ed. 4. challenge 62.



One challenged the polles without shewing cause, and afterwards challenged the whole Array, because made by a maintainer of the part of the Plaintiff, and because the first challenge was not tryed, he was allowed to have this challenge of the array, after that to the polles, and upon this tryed against him, he did challenge one of the polles because he had taken mony, *Tr: 13 Ed: 3: challenge 108:*

But in attainr, the polles were tryed of the one part and the other, as well the *Otho tales* as the principall panell, and many drawn, and afterwards the Plaintiff would have challenged the array of the *Otho tales*, and was not allowed, because he had challenged the polles before, *34 lib. Ass. p. 6. challenge 27.*

And the array challenged by the Defendant, and affirmed, and discontinued by the not coming of the Justices, at the re-attachment, the Defendant challenged the array, and because nothing of the Record remained but the origmall and the panell, the challenge stood, *M: 13 H: 4: fol. 10: challenge 155.*

And if the Plaintiff hath a *venire facias* served, and it remains by default afterwards, he shall not say that the Sheriff is his cofin, because he did know that before, but may say, that the Sheriff is cofin to the Defendant, *T: 15 H: 7: fol. 9: challenge 173.*

### XXI. Challenge to witnesses, or to a Juror, because he is named a Witness to the Deed, or to a Tryer.

**N**Ote, if there be twenty witnesses named in a deed pleaded, none of them shall be of the Jury, for it shall be a full taking them off, but it is no challenge to a witness that he is cofin to the party, for the verdict shall be given by the Inquest, not by them, and the Witnesses shall be sworn to speake the truth of that which they have seene or heard, and if the witnesses or the inquest cannot agree, the verdict shall be taken without the witnesses, and then attainr lyeth, *23 lib. Ass. p. 11. challenge 32. 12 lib. Ass. p. 12. challenge 9.*

A witness in an Assise was challenged, because he was named a disseisor in the writ, and it was not allowed, notwithstanding that he hath purchased the Demesne hanging the Writ, for he shall not be sworn upon the selfin or disseisor, and he was sworn, although it was said that he might be the Tenant of the Disseisor, and the Court sayd, that they have not known how witnesses can be challenged, *12 lib. Ass. p. 12. challenge 9.*

It was sayd, That one Witness alone will not serve, *48 Ed. 1. fol. 30.*

In an Assise, it was sayd, that the Array might be tryed by Witnesses. *Ston* sayd, not, for his Father may well be a Witness but not a Tryer. *Berr*, if we cannot have tryers, we must take the Witnesses, *66 H: 19: fol. 22. Assise 409.*

But see in an Affise, the Witnesses challenged, because they indicted him of Felony, and allowed, *Quod nota*, 22. lib. Affise P. 36. The like was of the polles.

Tryers chosen, were challenged, because Tenants to the one party, P. 21 H. 6. Challenge 38. and this before any were sworn upon the principall panell, but where they were challenged for the Hundred. Bryan sayd, it hath not been seen, that Tryers may be challenged till two be sworn of the principall, P. 22 Ed. 4. Challenge 62. But one of the Tales assigned for a Tryer was by the Justices drawn, because favourable; and he shewed the cause of favour; 9 H. 5. fol. 11. challenge 73. and it was no challenge to a tryer before tryall, that he is heir apparant to the Demandant by award, 7 H. 4. fol. 1. challenge 83 contra, that he was God-father to the party, and another was put in his place, M. 43 Edw. 3. Challenge 95.

It is no challenge to a Tryer, that after he was sworn, he hath married with the party, p. 11 R. 2. challenge 165.

XXII. Challenge, and plea for a Jury, and not for the party,  
and where a Stranger to the Writ may challenge, and where  
the Bayliff may challenge for his master.

**I**T shall be a good challenge for the Citizens of Oxford, who is impanelled, to say that there be some forraigners in the inquest, for they have a Charter that they shall not be sworn with forraigners, but the Defendant shall not plead it, now the Mayor and Comminalty, M. 4 H. 6. fol. 6 Charter 19. vide contra, that the Bayliff shall plead it, 29 lib. Aff. p. 15 Consens 60.

Vide that he shall not be impleaded out of, &c. it was held a plea for the parties, not for the Mayor and Comminalty, and the party shall lose the advantage by a continuance taken, and for that also, those of the town which were impanelled out, &c. lose the advantage to plead the same charter, that they shall not be impanelled out of &c. 30. lib. Aff. p. 1. consens 61. 29 lib. Aff. p. 13.

Affise awarded, and a panell made by the Sheriff, all of one Liberty, where it should have been of two. Trew said, that none shall plead this but the Lord himself, yet the array was quashr, T. 8 Ed. 3 fol. 22 shall. 3 vide the case Divis, 11.

It is no challenge in an Affise for the party to say, that the Juror was not summoned, &c. But good for the Juror himself, and the Juror shall not be summoned to make the view, but the Bailiff himself shall cause him to have the view, M. 8 Ed. 3 fol. 69. challenge 4.

One may not challenge himself because he is a Baronet, &c. without a Writ out of the Chancery, although it be found by tryers, 35 H. 6. f. 46. chall. 44.



Note that in an Assise the Bailiff may challenge for his Master where he appears for him &c. for favour, because of his fee, as of robes &c. to the Array, *lib. Ass. P. 10. chal. 15.*

*Vide Divis. 19.* That the King may not challenge where the issue is joined at the charge of the parties, *Tr. 16 Ed. 3. chal. 107.* because he is a stranger.

A Bailiff of a Liberty or Guild, may not challenge the Array made by the Sheriff where he ought to have sent it to him &c. but let him take a Writ against him if he will, *30 lib. Ass. chal. 147.*

As a *Nisi prius*, the Bailiff of a Town may not shew the Charter, that he shall not be impleaded out of for Land &c. for he ought to shew in the Bench, *29 lib. Ass. P. 13. Conusans 59.*

**XXIII.** Where a Juror may be removed without Challenge by examination of them which are sworn, and where the party himself shall be sworn to speak the truth.

**T**HE Sheriff returns a panel as made by himself, and the Jurors examined say, that it was made by the Bailiff, and for this the Array was quashed, *P. 8 Ed. 3. fol. 22. challenge 3. vide the Case, Divis. 11.*

A Juror challenged was sworn to speak the truth to the Tryers, if the Challenge touch not his honesty, *vide after Divis. 24. Hill. 49 Ed. 3. fol. 11. chal. 100. 23 H. 6. chal. 19. M. 19 H. 6. fol. 9.* and where the Tryers chosen were challenged, because Tenants to the party, and they were sworn to speak the truth, and they said they were not, *P. 21 H. 6. chal. 38.* and when the parties had said, the Tryers shall be asked if he said the truth, *M. 3 H. 4. fol. 4. chal. 78.* and upon Challenge that the Assise had not made view, it shall be tried by examination or by Tryers, *22 lib. Ass. p. 22. Trial 75.*

A Challenge to the Array made of the people of *E.* the contrary was inquired of, and was found by examination, and therefore the Array was quashed, *28 lib. Ass. p. 18. chal. 139.* So upon Challenge that the Sheriff is Goship and confessed by him, the Array shall be quashed without more ado, *P. 4 Ed. 3. fol. 11. chal. 51.*

It is no challenge in an Assise for the party to say, that the Juror was not sworn to speak the truth, but good for the Juror himself, and the Juror shall be sworn to speak the truth, and the Bailiff himself shall cause him to have the view, *M. 8 Ed. 3. fol. 19. challenge 4.*

One may not challenge himself because he is a Baronet, &c. without a Writ out of the Chancery, although it be found by jury, *32 H. 6. fol. 14.*

**XXIV.** Where a Juror may be removed without Challenge by examination of them which are sworn, and where the party himself shall be sworn to speak the truth.

**XXIV.** Where Challenge or matter alledged to avoid it shall be tryed, and how the Court shall demean it self in order and tryall of the Challenge.

**A** Juror challenged because Tenant to the party, the Tryers pray that he may be sworn to swear the truth, and so he was, *P.3 H.6. chal. 19. 19 H.6. fol.9. chal.32.*

All the Jurors were challenged, because none but the Tryers had any thing within the Rape, and one other, the Plaintiff shewed that all within the Rape were his Tenants, and prayed that they which were challenged might be sworn, if found for him, and by the Tryers it was tryed Presently against him, whereupon a *Decem tales* was granted of the same Rape, but if it were found for him, *Quare* if the others should be sworn, because they were challenged before, *P.3 H.6. challenge 19. vide the last Case of this Divis.*

If one be challenged and two tryers find him indifferent, now he with the two shall try the other Jurors, and when another is sworn the two Tryers shall be put out, and the two tryers shall try the rest, and upon Challenge for insufficiency they shall pray that the party may be examined upon *Voier dire &c.* and they shall be examined if he hath said the truth, *M. 19 H.6. fol.9. chal.32.*

After the Array challenged and tryed, he shall not challenge the Array of the *Tales* afterwards, for they shall be challenged together, and vwhen both be challenged together the Tryers shall be one of the panel, and the other of the *Tales per Port.* *H.21 H.6. fol.22. chal.67. lib. Ass. P.44. challenge 143.*

The Plaintiff challenged the Array, and the Defendant the *Tales*, and one was taken of the Challenge of the plaintiff, and another of the challenge of the Defendant to try it, *M.9 H.5. fol.11. Challenge 73.* and see both Tryers of the panel were of the *otto Tales*, *M. 8. H. 4. fol.17.*

Upon the Array, and also upon the *Tales* challenged for favour, two of the principall panel tryed the Array, and also the *Tales*, and quashed the Array, and affirmed the *Tales*, *H.19 H.6. Chal.33. P.33 H.6. fol.21. chal 41.* be the Challenge for one alone, or for severall persons, *ibidem*, but if they quash the Array, *contra per curiam*, but upon the Array affirmed they shall try the *Tales* in the Kings Bench, and the *Tales* shall not be tried untill the principall panel be tryed, *M. 9. Ed. 4. fol.46. chalenge 57.*

*20 Ass. 10.* they appointed one of the Array, and the Coroners to try it. *Vide 27 Ass. 28. and 21 Ass. 26. acc.* and in the principall Case here, the Triall of the *Ass.* was by two Attornyes of the Court by consent of the parties.

The



The one party challengeth all but one, and the other party challengeth that one. It may be that he did it by Caution to have him tryed whether he be favourable, wherefore the Justices would not take one of the Challenge of the Plaintiff, and him for the other, but the three, and the nine for Tryers, *P.21 H.6.challenge 38.*

The Polles shall be tryed by the same by whom was the Array, who were sworn to try the Array, although that the party releaseth his Challenge to the Array, if he challenge the polles they shall try them, *27 H.6.fol. 26.*

In an annuity against the Parson, and layes the seisin in one County, the Church being in another, and issue upon a Prescription, and tried by both, and both panels are challenged, there shall be two Tryers, the one of the one County, the other of the other, *P.34 H.6.fol.36.challenge 43.* but see that one Juror was sworn by assent to chuse two others to him to try the other panel, and the Court may chuse two of the other panel to try this, *P.11 H.4.fol 63.chal.88.* and not one of the one and the other panel, to try both as it was *34 H.6.*

So Tryers were to try whether the Juror was a Baronet, and found it, yet he shall not be helped without a Writ &c. *35 H.6.fol.46. challenge 44.*

After that six were sworn upon the principall panel, one was challenged, the six tryed him, and they could not agree till another time, and then they affirmed him, if he being called appears not, he shall be amerced notwithstanding the Challenge of both parties, because his contempt appeareth by note of the preignotary, although he be entred upon Record, yet the Justices agreed, that if any being impanelled appears not where there be others, so as the Jury be full, the Justices will not inquire thereof, but at the desire of the parties, *36 H.6.f.27.challenge 47.* Bryan saith, there shall be but two Tryers, but by consent of the party, *21 Ed.4.f.70.*

A Juror was challenged because he had an Action depending &c. found indifferent, was set aside, so that if there be enow of others, he shall not be sworn, but they say, if there be not enow we are agreed that it shall be done, afterwards the party released the action depending, and he was sworn, *M. 38 H.6.f.6.challenge 49.* One found indifferent was challenged by the other, because he had nothing within the Hundred, and was set apart untill it was known whether there were enough of the others, *H.3 H.6.fol.38.*

The Defendant challenged the Array, and it was found indifferent, he challengeth one by poll, it shall be tryed presently, because the Array was found against him, but after the Plaintiff challenged one poll, and it was not tryed untill the panel was looked over, because he had not challenged the Array before, *P.22 Ed.4.chal.61.Tr.43 Ed.3.challenge 93.*

The Jury appeared, and the parties could not agree of two Triers, whereupon the Court caused the Plaintiff to name four whom he would have, and the Defendant other four, and then the Justices said, take the third

third and the sixth of the eight to try them, 4 Ed. 4. fol. 11. challenge 92.

And where all are challenged, and they will not agree of Tryers without shewing some cause, and will not accept the offer of the Iustices, the Justices may chuse two tryers without more ado, *Trin. 16 Ed. 4. f. 7.* but where the parties agree they may chuse Tryers, and here the one chuseth three of the Challenge of the other, and then every one takes one of the six to try &c. *M. 18 E. 4. f. 18. &c.*

The manner of Cofinage not tryed, and the Array affirmed were put into an house, and the parties prayed that they might have keepers, & *negatur sedente curia*, but afterwards it was granted, *P. 7 Ed. 4. f. 4. chal. 54.*

There was an Appeal against many, and one *Venire facias*, and the Array quashed by the Challenge of one for all, and the Plaintiff prayed severall *Venire fac.* to the intent that the Challenge of the one should not be for the other. *Jenney*, you shall not have them, because you have chosen it jointly at the beginning, but he prayed it at his perill, and at a Gaole delivery, if one shall challenge peremptory, the Clerk may sever the felons, because they are not empanelled upon any person certain, *Tr. 9 Ed. 4. fol. 27. challenge 56.*

Of the form of Entry where the Challenge is quashed or affirmed, *Vide Divis. 20. 22 Ed. 4. Chal. 62.*

The two Tryers could not agree, and it was the evening of the holy *Tr.* whereupon by consent of the parties they went at large untill such a day, *H. 7 H. 4. fol. 10. chal. 85.* and where two Tryers had tried divers Jurors, and they and the others of the Jury were commanded to be there again the next day upon a pain, and although the Tryers have eaten at large with their companions, they shall be Tryers again, for they were not to give their verdict, *M. 2 R. 3. Challenge 101.* but see that it is error to discharge tryers without giving a verdict, and therefore the party would not release his Challenge after the tryers were sworn, *21 Ed. 4. fol. 70.* but *Finch.* said nothing of it, alledging the Case of *22 Ed. 4. vide verdict, Divis. 20.* concerning it.

A Jury was impanelled of two Counties, and both challenged, and three were taken of the one panel to try it, and two of the other to try it, and both were affirmed, the plaintiff challenged a Juror, and he was affirmed and sworn, and the Defendant challenged one, and the tryers agreed not, whereupon they were put under guard, and the plaintiff did not proceed untill they had agreed, for one of the one panel, and another of the other shall be sworn by course, and because they agreed not that night, the tryers of both panels, and also the Juror sworn, for the plaintiffs were under guard without meat or drink, and after they agreed, and found indifferent, whereby he also was sworn upon the principall panel, and when the other Juror was in triall of the other, they did eat and drink, but not the Juror who was first sworn upon the principall panel, untill the verdict.



dict was given, and note that the Justices would not take one of one County, and another of the other to be tryers, *P. 11 H. 4. fol. 63. Challenge 88. &c.*

If there be three or more tryers, and the greater part agree, this is not to the purpose, but they shall be under guard till they be all agreed, *Tr. 20 Ed. 3. Triall 68.* but see where two agree, and the third not, the Justices may take the verdict of the two, and commit the third to prison, *per Curiam, 29 lib. Ass. Pla. 4. Chal. 146.*

And challenged, because he had an action depending, &c. or that be passed at another time against him, it may be tryed by oath of the Jury himself without the record, but it is no principall Challenge, and shall conclude to favour, and inquired by tryers, *M 8. H. 3. fol. 11. Chal. 179.* and see after how a Challenge by record shall be tryed, *43 Ed. 3. Chal. 93 &c.*

In attaint the Array and panel were challenged, the Justices did chuse two Knights to try who might chuse them a Knight and a Serjeant, and the two Knights were of the same panel, *34 lib. Ass. p. 6. Challenge. 127.*

Array challenged for favour, tryed by the Coroners, and not by them of the enquest, and *Shard* said, the one Triall or the other may be good in Trespasse by Bill, *27 lib. Ass. p. 28* and see where it was tryed by the Coroners and one of the panel, *20 Ass. P. 10. Chal. 15. and 138.*

In an *Oyer and Terminer*, the party challenged the Array, and prayed a triall by others then by those of the Jury, and the Court would not, *29 lib. Ass. p. 3. Chal. 245.* and *vide Divis. 21.* that one witness may be tryer in default of others, *19 Ed. 2. Assise 409.*

In attaint twelve were sworn and the others challenged, because they had not 20 l. land, but one who made default. *Wangf.* you may now try by tryers if there be others within the County of 20 l. land, and if not they of the next value shall be sworn; and also tryers sworn, if there be more of the value within the County, and this hath been done without being certified by the return of the Sheriff. *Chok.* you cannot inquire, nor swear any within 20 l. Land untill he that made default be sworn, or challenged and tried *per Curiam*, whereupon 16 *Tales* were awarded, *H. 6. fol. 23. Attaint. 6. Vide* where none of the Hundred were returned, and it was surmised, that all there were Tenants to the party, and this was tried without return of the Sheriff, *45 lib. Ass. p. 1. Challenge 123.* where all were challenged, because not within the Rape, and the Defendant shewed that all there were his Tenants, the tryers tried this presently without the return of the Sheriff, and it was well debated, *P. 3. H. 6. fol. 39.* and see such a suggestion by one to the *Venire facias* shall not be accepted, if the other confesseth it not, and then there is no other Challenge for the other party, for this cause afterwards, *P. 22. Ed. 3. fol. 3.*

Upon damage mistaken, as 201. where it should have been 20 Marks, the whole was void, and a new Triall, *M. 9 H. 6. fol. 9.*

**X X V.** Triall of the Array in Assise or other Action, where as to the polles, and where to say, that he was not summoned, or not to have the view, Titul. Trial, Divis. 23.

**A**ssise in the Kings Bench, where in a special Assise the tryers shall be *ex circumstantibus*, but of the same panel, *P. 9 Ed. 4. fol. 5. Triall 25.*

In a special assise the party shewed that the Sheriff was beyond the Sea at the time of the panel, and had made no under Sheriff, the Justices examined the under Sheriff, who said that he was the under Sheriff, and the Assise taken, and a Writ of Error was brought, because the matter should have been tryed by four or five of the Jury, and not by the party himself, because it touched his honesty, and although the Justices might rule the exception by their discretion without triall, yet because they had tryed it otherwise then it ought, and made this triall parcell of the Record, it seemed that this Error might be assigned, and in reason the party shall have the averment after the return, for before he could not have exception to it, *per Gascoigne & Hulls*, but *Hank* said, if other triall shall be then by the discretion of the Justices, what shall be done, if by one Jury he be found to be Sheriff, and by another that he is not &c. *Ad quod non fuit responsum.* *Gascoigne*, if the Sheriff himself were there, it shall not be inquired of, but tried by his Patent, which is of Record, and where processe issueth to the Coroners to make a panel, the party avers that the Sheriff made it, and not Coroners, it shall be tried presently by two of the panel, so it should be here, *H. 10 H. 4. fol. 47. Triall 103. 9 H. fol. 1. Triall 36.* *Quere*, and see where the Sheriff had returned a panel as made by himself, the Justices examined the Jurors of it, and they found that it was not *8 Ed. 3. fol. 23. Divis. 11. & vide Divis. 23.* where the Triall was by examination of the party, and if the under Sheriff or the Bailiff had confessed the thing, it had not been to him error, *41 lib. e. Ass. Pla. 26. Chal. 166. Divis. 10.*

The three tryers could not agree, whereupon the Justices took one of the one Challenge, and another of the other to join with them, and all were under guard till they agreed and assigned, then the triers themselves were challenged, and the third ousted, the second and the third of the three was tried by the other two, and affirmed, and sworn upon the principall panel, and he with one of the two tryed the other indifferent, and by these two tryed good, the third was drawn, and the two sworn upon the principall, *Tr. 20. Ed. 3. Triall 68.*

*Bastardy* alledged in a Counter-plea of Coinage, alledged, tryed, by



**Tryed In non Affinity** *Challenge* 1163. *non cognab noqu*  
 What shall be done when a Bailiff returns others which had not the  
 view, *vide 41 lib. Ass. p. 26*

In a Writ of right, two of the four Knights were challenged for  
 favour, and two because procurers, the Justices made the two supposed  
 to be procurers to try the other two, and the other two to try them,  
 and all affirmed, and then they chose to them sixteen Knights of them-  
 selves, girt with a sword, which were of the affinity to neither party, to  
 try and take a place in the Hall, and they shall not chuse any Serjeant if  
 there be Knights convenient, and the four shall not be discharged, and  
 empanelled with the sixteen, and a *Venire facias* awarded, and it was  
 said, that no *habeas corpora* shall issue here, but some held otherwise, if  
 one be returned dead, the *habeas corpora* and *venire facias* for another  
 Knight, and he shall be tried in Court if he be challenged, *M. 22. Ed. 3.*  
*fol. 18. challenge 119.* but it was holden that the challenge to the four  
 Knights good, when they are in the house to chuse the great Assise, and  
 shall not be tried before the Justices *Brain contra*, and the one Knight  
 shall be tried by the three, and upon the drawing of him, the next shall  
 be tried by the two, and if they draw him also, and another is chal-  
 lenged, a new Writ shall issue to make to come other three Knights, for  
 the Challenge may not be tried by one, *Nels* moved there that they are  
 Judges, and it shall not be challenged, and therefore held by *Herle* that  
 they shall not be challenged now, but when they are put in the panel, *7. Ed. 3. fol. 13.*

### XXVI. Challenge, because a Baneret, or to Knights in a Writ of right, or because Knights are not returned.

**I**n a writ of right, a Knight was challenged because he was a Baneret,  
 and it was holden that he should be sworn if he be not a Baneret, and  
 holds by Barony, *M. 22. Edm. 3. fol. 18. challenge 119.* But this ought to  
 be certified by writ, otherwise it is no challenge, *H. 35. H. 6. fol. 46. chal-  
 lenge 44.*

29 E 3. 2. 15  
 b. 7. acc.

Challenge to Knights in a Writ of right for affinity or other matter  
 and how, and when it shall be taken, and when the four Knights are  
 sworn, they were commanded to go by the assent of the parties, and  
 to chuse to them twelve others, who did so, and afterwards the party shall  
 not challenge, because they have consented, *30 Ed. 1. Item challenge,  
 172.*

Pl. Com. 100.  
 Vide 9. E. 4. 37  
 3. H. 4. 11. 34 H.

6. 18. Eliz. Dyer 146. The Array challenged by the Bishop, because one Knight was returned, *see C.  
 Lit. 157 acc. Vide 2. H. 4. 11. 34 and 4. Ed. 3. Dyer the Lord Hastings case 208 acc.*

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party

party to the issue, as Bishop of C. that it shall be a good challenge that no Knight is of the inquest, T. 13 Ed. 3. challenge 115.

An attaint shall not be taken without Knights, and if there be not enow within the Wapentake, they shall be taken, *De corpore comitatus*, &c. M. 17 Ed. 2. Attaint 69. &c.

**XXVII. Challenge to a Juror, because he came at the charges of the party, or did eat at his charges, or where favour shall be implied, because he is his parishioner, or within the others Jurisdiction, Authority, or in awe of the party, &c.**

**A** Juror was challenged, because he came or stayd at the charges of the plaintiff, this is a principall challenge without more ado, though he be an indifferent man, M. 8 Ed. 3. fol. 69. challenge 4. So if he eat at the charges of the plaintiff after the panell, M. 13 H. 4 fol. 14. challenge 154. and see there the challenge good where the Attornyes of both parties gave Mony to the Jurors for their diet, although the plaintiff would not allow it, but disavowed it in the Court, 13 H. 4 fol. 15.

A Juror was drawn, because he had eaten at the charges of the party, depending the suit, M. 22 R. 2. challenge 177.

It is no challenge, that the Juror is a parishioner, where the plaintiff is Parson, M. 33. Ed. 3. challenge 169. and it was in wast, and in debt it was sayd to be no challenge, because the right of the parsonage cometh not in debate, 17 lib. As. p. 13. challenge 14.

Note, Challenge for eating, taken at any time before the verdict, *Or amicus curia*, 14 H. 7: fol. 31: 15 H. 7. 2 20 H. 7. 3. & 8.

**XXVIII. Challenge to a Juror, because an Arbitrator for the one party, or to the Array.**

**A**N Arbitrator chosen by the one party well challenged, not if he were chosen by consent of both, although that it was of the same trespass, H. 3 H. 6: fol. 24: challenge 16. But if he were an Arbitrator in another matter as debt, (where this action is of trespass) and in attaint upon a false oath, in forcible entry, if the Sheriff were chosen Arbitrator for the one upon the title, and not upon the matter of the false oath, it is no challenge, but being chosen by the one, although it was to be indifferent, it shall be a good challenge, for he shall not be held indifferent where he is not chosen by both, so if being chosen by the one, and hath not chosen of the matter together, it is no challenge: But the Justices would advise where it was, and it is found that he made an indifferent Award



ward, *M. 20 H. 6. fol. 39. Challenge 37. 9 Ed. 4. fol. 46. Challenge 57.*

**XXIX.** *What Challenge being good in an action real, is not good in an action personall, and where damages are onely to be recovered.*

**I**N Trespasse the Defendant justified by the commandement of two with whom the Iuror is jointenant, and this was not a principall Challenge, because damages onely are to be recovered, but it ought to conclude of favour, *T. 7 H. 6. fol. 44. Chal. 24. vide 10 H. 6. fol. 7. Divis. 18.*

**XXX.** *VVhere cause of Challenge shall be shewed at the beginning and where not.*

**H**E that hath challenged the Array, it being affirmed, shall not challenge the Polles afterwards without shewing cause presently, but if he had not challenged the Array, he might go through the Panel, without shewing cause to the Polles, *P. 33 H. 6. fol. 21. Chal. 42.* which of the first point agreeth, *P. 22 Ed. 4. Chal. 61.* and with the other agreeth, *P. 7 H. 4. fol. 41. Chal. 81. & T. 43 Ed. 3. Chal. 93. Tr. 20. Ed. 3. chal. 116.* and if after the Tryers be sworn, the party releases his Challenge to the Array, he shall not challenge the Poll without shewing cause, for the releasing affirms the Array, *M. 27 H. 8. fol. 26.*

In an Appeal against, many one challengeth the foreman of the Jury, and he was compelled to shew cause presently, but he shall not be tried till the panel be gone through, because none is yet sworn to try him, but in an Assise he may challenge generally and not shew cause till the Panel be gone through, and after that some of the enquest be sworn, another was challenged and tried presently, and the first man challenged was tried, and the Challenge disallowed. Now another of the Defendants would have challenged him, and could not, because he did it not before, so because some of the Defendants confessed that they were Clerks, they were removed upon their Challenge, and yet they shall not demand their Clergy, *M. 1. H. 5. fol. 10. challenge 70.*

In attaint the panel remained for default. It seems that although that one of the first Jurors which was sworn shall not be challenged afterwards, unlesse for some new cause, yet the panel of them shall be perused through, as if they were sworn, and then he shall shew cause, and shall be tried, *M. 22 Ed. 4. fol. 1. challenge 64.*

Note.

Note although the King be party, the other party which challengeth shall not be compelled to shew cause of the Challenge untill all the panel be gone through, *M. 6 Ri. 2. chal. 105. vide contra* adjudged, 38 lib. *Aff. P. 22. chal. 128.* but 6 *Ri. 2.* the Justices said, that in Case of the King it is not as in case of a common person.

## XXXI. Where Challenge may be to Juror upon an Enquest of Office.

**I**N a *Quale jū* to inquire of a Collusion upon a recovery by a Prior, the King challenged the Jurors because they were Tenants to him who lost in the former Action, and not allowed, *H. 34 Ed 3. Challenge 175.*

It was held, that in a Writ to inquire of Wast, the party may have Challenge to the Array before the Sheriff, and also to the Polles, but not in a Writ to enquire of damages, 2 *H. 4 fol. 3. attaint 13.*

In *audita quarela* issue was taken upon the payment of a lesse summe, and payment proved, whereupon he prayed Judgement, and the Court awarded a *Venire facias* to the same Enquest to assesse damages, and they would not tax themselves, and the Defendant shall not have Challenge to them, unlesse for some cause of later time happened, *P. 22 Ed. 3. fol. 5. Barre 283.*

## XXXII. What things disable a man from being of any Jury.

**I**T hath been adjudged a good Challenge that a Juror hath been attainted in an attaint, or in a conspiracy, but it seems it is not so of an attainder for forging of false deeds which is a new Action, *M. 33 H. 6. fol. 55. Chal. 41.*

It shall be a good Challenge that Juror is a villain, *Tr. 9 Ed. 4. fol. 16. Challenge 55.* and the Sheriff shall be amerced for such return, 26 lib. *Aff. P. 28. Chal. 135.* An Alien born in *Flanders* may well be challenged, although he hath been sworn to the King, and hath been in *England* from his infancy, for that doth not make him a Denizen, *M. 14 H. 4. fol. 19. Chal. 91.*

An Indictment was held void, where any of the Indicters were outlawed of Felony, at the time of the indictment, and the Indictee alledged it upon his arraignment, where properly it ought to have been alledged before the Enquest taken, yet it was held *ut supra*, and the Indictment adjudged void, *H. 11 H. 4. fol. 40. A. Indictment 25.* so when one is excommunicated, *ibidem.*

## XXXIII. Where



**XXXIII.** Where Challenge shall not be allowed because it is the same panell, which was another time returned by the Sheriff, and quasht.

**A** Panel returned by the Coroners was challenged, because the same was returned by the Sheriff another term and quasht, yet not allowed, *H.25 Ed.3. fol.37. Chal.121.* the panel made by the Bailiff being of the parties Counsell was quasht, and proceffe to the Sheriff who returned the same panel, and it was not quasht, but there the Sheriff returned also that there were no more sufficient in the Hundred, *33 lib. Ass. P. 12. Chal. 126. vide Divis. 43.*

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Champerty.

# CHAMPERTY AND MAINTENANCE

I. *What Feoffment, Sale, or Gift, shall be said Champertie, what not.*

**I**F one maintains the Demandant, who also recovers and enfeoffs the Maintainer, Champertie lieth. So where one maintains the plaintiff in Debt to have part of the money &c. 47 E. 3. 9. *champerty* 4. and a Feoffment Sale or gift depending the suit, is holden Champerty of it self, but not if he purchase after Judgement, because there is no suit then depending, but that is to be understood where he did not maintain before, 8 E. 3. 13. *champerty* 3. And in Champerty upon Proceffe returned such a day, the Defendant shewed that he purchased before the Writ returned, and he was driven to traverse that he did purchase to maintain pendant the Writ, and the plaintiff did aver that he did, and then shewed the date of his Writ, 30 E. 3. 3. *champerty* 7.

It was said by the Court, that if I bargain for Land before the Writ brought, and afterwards Livery and Seisin is given me, this is not Champerty, *M. 19 R. 2. champerty* 2. and therewith seems to agree, *Fitz. N. B. 172.* But see 30 E. 3. before, and 9 H. 7. 18. where the Defendant pleaded the same matter, and further traversed that purchase to maintain, and yet it was said, that if a man take upon him to maintain or purchase before the Writ to maintain, if he do not in *facto* maintain, that Champerty will not lie, *vide 30 Ass. 15. champerty* 11. It is holden no plea that he did not purchase pendant the Writ, if he do not also traverse the taking upon him to maintain &c. See the Statute of *Articulis super chartas cap. 11.*

A Lease taken of Lands for years is Champerty, 30 E. 3. 3. *champerty* 7.

If a man covenant by Deed or without Deed, that I shall have the Rent of the Land in demands, to maintain the same is Champerty, but a Rent granted out of other Lands is not Champerty, but if he do maintain Maintenance lyeth, *F. N. B. 172.*

I I. *Where*



I I. *Where a Feoffment or purchase hanging the Writ, shall not be Champerty.*

**C**hamperty, supposing that he did maintain *J. N.* who gave him part &c. the Defendant shewed that one *B.* was seised, and enfeoffed the said *J. N.* upon condition, and for the condition broken entred, hanging the suit, and did enfeoff him without that he had any thing of the Feoffment of *J. N.* yet because he came to the Land, depending the suit, he was forced to traverse the purchase to maintain, or the maintenance, *P. 31 Ed. 3. Champerty 3.* but *19 R. 2. Champerty 15.* he did traverse the Feoffment of *J. N.* onely, and it was admitted good, and the cause seemed to be, because it is sufficient to traverse that which the party alledgeh for cause &c. but *30 Ass. 15.* agrees with *31 E. 3.* before.

Note that a purchase hanging the Writ is not Champerty, if it be not to the intent to maintain, which is denied by all the Serjeants, for that by intendment he will afterwards maintain, *P. 32 E. 3. champerty 6.* But see *4 E. 2. champerty 12.* that it is not Champerty without the intent, and therewith agrees *F. N. B. 172.* of a purchase *bona fide.* Vide *21 E. 3. 52. Champerty 8.*

But see *8 E. 4. 13.* agreeing with the Serjeants, and that the purchase hanging the Writ doth imply Maintenance, if the Writ be not brought by coven, to the end he shall not alien his Lands &c. *champerty 3.*

In Champerty upon a Purchase hanging the Writ, the Defendant said, that he was son and heir of the vendor, and it was holden no Champerty because excepted by the Statute of *Articuli super chartas cap 11.* the gift was to the son in Frank Marriage, *T. 6 E. 3. 33. champerty 10. F. N. B. 172. acc.*

It is holden *per curiam*, that if I make a Lease of Lands to *T.* for life, and *Pracipe* is brought against *T.* and hanging the *Pracipe* he doth surrender to me, that it is not Champerty, wherefore the plaintiff traversed that I had nothing in the Land before the Writ, *M. 17 E. 2. champerty 14. F. N. B. 172. acc.*

It is holden, that if the Tenant make a Feoffment to his use, hanging the Writ, that it is not Maintenance. *M 8 E. 4. 13. champerty 3.*

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III. *Where Champerty shall be without Feoffment, Gift, Sale, or Grant upon promise in an Action reall or personal.*

**I**N Champerty the plaintiff declared, that the Defendant did maintain in a *Subpana* to recover a debt, and to have part of the money, the Defendant shewed that the said *A.* was a stranger born, and was indebted unto

unto him, and promised him payment if he did recover, and that thereupon he went with him to councell, &c. and it was holden a good excuse, for the interest which he had in the same, 15 H.7.2.

Maintenance upon a promise to have part of the mony in debt, or Pre-  
cipe, is Champerty, although the action doth depend, so as he hath no  
losse, 47 Ed. 3. 9. Champerty 4. H. 21 Ed. 3. 53. Champerty 8. And it  
was holden, that the Writ doth lye upon an undertaking, though he  
doth not after purchase, and therefore it was holden no plea, that he  
did not purchase, hanging the Writ, 30 E. 3. champerty 11.

1. Ma. Dyer 95  
If a man take  
money to main-  
tain, although  
he doth not  
maintain, it is  
Champerty and  
Maintenance.

T: is bounden to enfeoffe me if I do recover the land in his name, now  
if I do recover it, and he doth enfeoffe me, it is Maintenance and Cham-  
perty, M. 42 E. 3. 23. Barr 190.

## IV. What person shall have the writ, and where the King, or a- nother party, who was not party for the King.

**K**Irton saith, That in an Affise Champerty lyeth, as well for the  
Disseisor as for the Tenant, and the one may have one writ, and  
the other another writ, and the husband alone may have Champerty up-  
on maintenance in an Affise against him and his wife, or he may joine  
his wife in the writ if he please, and it is not materiall which of them was  
Tenant, P. 47. E. 3. 9. champerty 4.

Champerty lyeth for the King without any indictment, and without  
information by matter of Record, because that the statute is, that the Ju-  
stices shall send to enquire &c. of the Laches, &c. and the Writ re-  
quires not that the party demandant shall sue, and if the party wil not sue,  
it should be hard to oust the King, T. 12 Ed. 3. champerty 9. And see 3 E  
3. Itin. North. champerty 13. where Scrope gave Judgement according-  
ly, but Hill there sayd, that the Action is given only to the Tenant to pu-  
nish the Champerty, and not to him who is Informer; Bu: see the Sta-  
tute of *Articuli super chartas* 11. which gives the suit to the party for the  
King, or for any other who will sue for him, and the forfeitures to the  
King and Informer, vi 21 Ed. 3. 52.

In a Writ of Champerty, where the Writ did abate for false Latine,  
yet the party was put to answer to the Kings suit, 17 Edw. 2. champerty  
14.

This suite shall be sayd the Kings suit, yet a man may sue forth an Ori-  
ginall out of the Chancery, or have a speciall Writ to the Justices, to en-  
quire and determine, F. N. B. 172. C.

K k

V. Where



## *Champerty and Maintenance.*

V. *Where the party in Champerty, shall finde Sureties for the profits.*

**V**Pon this Writ abated, the Defendant was put to answer to the King, and the issue joyned was upon a surrender, and the Defendant found Sureties to attend the issue, and to answer the profits in the mean time, 17 *Ed.2. champerty* 14.

VI. *The forme of the Writ, and Declaration in Champerty.*

**T**He King in this action need not make any speciall Declaration; but alledge only, that the Defendant did maintain, &c. because in the Action he is not to recover damages, but to punish the party &c. but in a *Quare impedit*, he shall set forth the place and the day of the maintenance in the first action, &c. *T. 12 E.3. champerty* 9. and the date of the first originall need not be shewed, *H. 30 E.3.3. champerty* 7.

The Declaration is good, which supposeth that he did maintain, hanging the suit, though the Writ be that he did maintain, *Pro parte habenda*, &c. *Thorp* said, that there is no other writ, 30 *Aff. 15. champerty* 11. *P. 31 E.3. champerty* 15. Also where the Writ saith, *Adhuc manet tenet*, and by the Declaration it appeareth, that the plea is determined, yet it is good, for peradventure the party durst not bring an Attaint, for that default, 47 *Ed.3. 9. champerty* 4. So where the Writ is doubtful, and by the Declaration it appeareth, that the maintenance is of the Demandants part, yet it is well, *H. 21 Ed.3. 52. champerty* 8.

VII. *Against whom Champerty lyeth.*

**T**He Statute is a prohibition against the purchaser, and seller, and yet the writ brought against the purchaser only, is good, 30 *Aff. 15. & 31 Ed.3. champerty* 5. And see the Statute which gives punishment at the will of the King against the Officer who maintaines, and punishment as well to the seller, as &c. *West. 2. cap. 49 and 50*. But see the punishment to loose the land, is given against the purchaser only, and so it is of goods by *Articuli super chartas*, 11 and 12. and imprisonment for two years is given against the purchaser and assentors, by the statute of *Berwick* 11. *E. 1. and 31. E. 1.* and the Statute of *Westm. 1. cap. 26.* gives punishment against the purchaser at the will of the King. No man shall get, buy, or promise to buy any title of Lands or Tenements, but of such as they or their

their Ancestors have been a year in possession, reversion, or remainder, upon the paine the buyer, or seller forfeit severally the value of the and, the one half to the party that sueth, &c. 32 H. 8. cap. 9. It must be ned within the year. See the definition of Champerty, Vi. 33: E. 3.

## VIII. *Where Maintenance may be justified for Consanguinity, add what maintenance it shall be.*

**I**F my cosin, who by possibility may be my heir, giveth his proper goods to my counsell, this is maintenance upon good advise, T. 29 H. 6. maintenance 2. and issue was joyned accordingly there in a reall action, 29 H. 6. Issue 83. But in 34 H. 6. 25. It is holden, that the father may give mony for his son, because he is bound to find him, but not so of any other cosin; but the book of 29 H. 6. was, that it was for his son who was his Heir apparant, every one may help his cosin to a Lawyer, but he may not give mony, 4 Ed. 4. 32. But see 14 H. 6. 6. Where he justifies as cosin to him who was arrested at the suit of the Plaintiff, and pleads further, that he was a maintainer for him, and to have the sum &c. Barr 15. It was holden that the brother of one of the commonalty cannot maintain in an action brought against the Mayor and comonalty, 21 E. 4. 38. but otherwise it is if the action were against his brother, *actio ibid.*

And the Son may maintain his Father, whose heir he is by every Law: By *Herle*, and therefore if he purchase of his father hanging the Writ, it is not champerty, *Quare*, for it was delivered upon, but it doth not appear that it was for that cause, or because the purchase was in Frank marriage to the son, M. 6 E. 3. 33. *champerty*, 10.

vi. 22 H. 6.  
Plow. Com. 305  
If the father be impleaded, he may enfeof his son for his assistance of him  
21 H. 6. 16.  
The son may give his own mony to his fathers counsell, acc. attor.

## IX. *Where Maintenance shall be justified for affinity, or alliance, and in what manner.*

**O**Ne freind may counsell another, and it is not maintenance, otherwise it is of a stranger, M. 22 H. 6. 35: and it was sayd that a Gossip may maintain for affinity; and he who hath married my sister may maintain as cosin or brother may; but then he ought to alledge that my sister is alive, M. 6 E. 45. And the Action there was, that he did retain counsell &c. and I may maintain him who hath married my daughter, and may be at the barr with him, and comfort him, but I may not give money. And *Brian* sayd, that I may bring my neighbour to a man who hath knowledge in the Law M. 19 E. 4. 3. and that was in case of an attachment in the Chancery.

36 H. 6. 28.  
30 H. 6. 29.  
9 H. 6. 64. ac.  
15 H. 7. 2.  
22 H. 6. 35:  
34 H. 6. 25. ac.



X. Where Maintenance may be justified by the servant, and in what manner, and when the Master shall justify Maintenance for his servant.

Maintenance was supposed in an appeal of Mayhem, brought by S: against the Plaintiff, the Defendant did justify as servant, and the other by protestation that he was not his servant; for plea, said, that the Defendant did perswade him that he should not agree, and that he would pay his costs, and afterwards he came with S: and payed so much, &c: It is a good plea if he alledge the giving of the mony to be after the action brought, for there is no maintenance if there be no suit at the time, &c: *M. 3 H. 6. 54: And a servant shall not give mony, 19 E. 4. 3.*

And a servant retained with me to go to London, cannot justify as a servant to aid and assist me in my suits, but he who is retained as a dayly servant, for no certain service, may justify as servant, without shewing what kind of maintenance he did, which he cannot do in the other case, by *Markham, Quare 39 H. 6. 6:*

No Servant may threaten a Jury, 19 H. 6. 31.

A man may signifie to his servant who he shall take for his counsell, the better to speed his cause, and may stand by him at the bar, 19 H. 6. 30: and a man may pray a Lawyer to be of counsel with his servant, and justify the same in one town where the maintenance is sayd to be in another town in trespassse, *vi. 21 H. 7. 15. Maintenance 7:* The Master justified the retaining of counsell for his servant who could not speak English: *Priest* sayd, 34 H. 6: That I shall not maintain my servant who is arrested for his own debt or trespass: Otherwise it is for any thing which he doth by my commandement, which was agreed by the Court, wherefore the Master sayd, that his servant prayed him to pay for him forty pence of his wages money, which hee did, and it was holden no good justification, for every stranger might so pay the mony of the servant, 34 H. 6: 25. *b.* But *Fischden* sayd, that if my servant be arrested for debt, &c. in London, or any such priviledged place, I may help him, and spend of my own mony by reason of the losse that I have of his service, otherwise it is if he be impleaded in a *Precipe*, &c. 21 H. 7. 40: *Maintenance 28.*

But *Newton* said generally in maintenance upon an appeal of Mayhem. That the Master may give of his own mony to the counsell of his servant, to which the Court agreed, and he may pay the fees for the discharge of his servant, or lend him mony, but he cannot give mony to the Jury for giving of their verdict, 21 H. 6: 13: and the labour of the Master to the Jury to shew the truth, was no maintenance, 22 H. 6. 5.

But it was adjudged maintenance where the Master did deliver of his own money to distribute &c: for his servant, 31 H. 6. 8: *Error 32:* And it seems the Master cannot give money to the counsell of his servant, if the

the mony be not of his wages which he hath in his hands, 19 E:4.3. But he may retain counsell without giving them mony, 31 H.6.1.

X I. Where the Lord may maintain his Tenant, and he in the Reversion his Tenant.

THE Lord or he in the reversion may maintain their Tenants by *Babington*, and *Paston*, 9 H.6.64. in a *Detinue* of Charters; but that is for such things as do appertain to the Lands, but they cannot maintain in trespass done in lands of another, M. 27 H.6. Maintenance 25. And the grantee in the Reversion cannot maintain before attornment of the Tenant, but the grantee of a term after the life of the Ter-Tenant, may maintain the Ter-Tenant, 9 H.6.64.

And I may maintain my Lessee for years, or Bayliff, in any thing which doth concern the land, because they shall not have aid of me: So if one hath possession of my goods, and they be attached, which *Danby* denied, 39 H.6 21.

Trespass brought against *S.* who justified for a buriall in the Church-yard of the town, and it was holden that every one of the town might maintain him, and some sayd, That the Lord of the Town might likewise so do although he were not one of the town. *Quare* 18 Ed 4.2.

M. 28. & 29: in B. R. it was adjudged, that if the Custome of a Mannor be in question betwixt the Lord and a Copyholder, all the other Copyholders may spend their money in maintenance of the other, and the custome.

X I I. Where Maintenance shall be to a stranger, and justifiable for the Interest which he hath, and because he may thereby strengthen his Title.

MAintenance was supposed in a *Detinue* of Charters, The Defendant shewed, that *S.* was seised of certain lands, and granted the same to him, and that the Charters did concern that Land, and that he granted him the Charters, if he could recover them. *Babington* sayd, if the grant were good, then *S.* had no cause of action, &c. and if voyd, then it was void, and then it is maintenance, because the Defendant had no interest, therefore we are to see if the maintenance was before the grant or after, 9 H.6.64.

*S.* is bound in an obligation to *T.* who is indebted to me, and assigns the Bond to sue in his name, and delivers me the Obligation, *T.* dyes, and afterwards I do put the obligation in suit in the name of his Executors who agree unto it, this is justifiable maintenance, and if one be bound to *T.* to my use, I may sue the bond or may maintain the Action, if he put it in suit, &c. H. 34 H.6.30. Maintenance 24. and in the first case I may pay counsell



councell with my own mony, *Quere* 15 H.7.2.

If one lye attached by my goods being in his possession in *London*, I am not bounden thereby, and therefore I cannot maintain him, by *Danby*, but I may maintain my Bailiff, and yet judgment given against him shall not bind me; *vi.39 H.6.21.*

Tenant in a *Precipe* makes a feoffment, pendant the Writ, and afterwards looseth by default, and brings deceit, the feoffment cannot maintain him, 8 E.4.13. *Maintenance* 19.

He who is a meer stranger, cannot pay councell for me, 21 H.6.16.9 E.4.32.

It was holden, that the Lord cannot procure his villein to sue for his goods which are taken, yet it shall be for his advantage, so where his villein was disturbed of an Oxe grasse granted to him, 22 Ed 3.15. *Replevin* 38.

If the Debtor pay mony to the councell of the debtee, the same is maintenance, 19 E.4 5.

XIII. *What Act shall be said maintenance by him who hath not to do &c. what not.*

One came to a Preist, and shewed him that a stranger had a *Capia* against him, and prayed his advise, and hee advised him to appear at *London*, and to purchase a *Supersedeas*, and it was counted no bar, because no maintenance was acknowledged, for which cause he was driven to traverse the maintenance, 22 H.6.35. and 39. yet *Prisot* thought it a good barr, because the stranger was a poor man living of Almes, &c. to which *Martin* agreed, 9 H.6.64.

*Prisot* conceived, that if a stranger came with me to a Lawyer, and prayes him to be of my councell, that this is maintenance, T.35 H.6. maintenance 21, 21 H.6.16. *Maintenance* 20. But one neighbour may inform another of a man learned in the Law, 22 E.4.35. But if I shew my evidences to a man not knowing the Law, and hee say expressly that they are good, and cannot be better, it is maintenance if he be a Lord, or other powerfull man, L.36, H 6. *Maintenance* 22. M.22 H. 6. 5. *Maintenance* 8. See the Statute of 1 E.3. cap.24. 80. 26 E.3. cap.3. doth not limit any certain punishment.

If a stranger be compelled by the Court to speak the truth, and he delivers what he knows of the truth, this is justifiable. So if the Jury come to him to have notice of the matter; but if he speak to them of his own accord, he shall be punished for maintenance, although that be truth which he speaks, *Per curiam*, 28 H 6.6. *Maintenance* 10. And it is there sayd, If a stranger doth come to the bar, and informes the Jury of his own head, it is maintenance, but not if he be examined by the Justices. See the case of

of conspiracy, 20 H.6.36. of him who was impanelled and was drawn &c. and if a stranger come to the bar with me, this is maintenance, though he speak nothing, 22 H.6.5. and by *Prisot* 32 H.6.29.

If a stranger give his money to another to distribute to the Jurors, this is maintenance in the first, although the other doth not distribute it, and if he do distribute it, then it is maintenance in them both, 28 H.6.7. *Maintenance* 11.

**XIV.** *What Act shall be said Maintenance in him who may intermeddle, viz. Attorney or the like.*

**I**F a Serjeant or an Apprentice deliver the Law at the bar for his Clyent, it is lawfull, but if he after say to any of the Jury, that he shall be beaten if he do not pass for his Client, this is maintenance, *Ab initio*, 36 H.6.27. *Maintenance* 15.

Also it is holden no maintenance for an Attorney to give of his own money to counsell by his Clyent, T.35 Hen: 6: *Maintenance* 27. *Per Curiam*.

And Maintenance doth not lye against an Attorney for speaking great words to the party, for he may inform the Jury, but he cannot give them money, for that is Maintenance, but not Embracery. *Hull*, An embracer is he who taketh to embrace, to lead the Jury, but maintenance doth not lye against the party himself for giving of money to the Jury, 13 H.4:16: *Maintenance* 23.

One Juror may perswade another to be of his mind, as he thinks the right is, but cannot give money, M:17 E:4:5: and it is a good barr *prima facie*, that he was one of the Jury without any more: Yet he further sayd, that he had given his verdict, the Plaintiff sayd, that after verdict he prayed the Steward to give Judgement so soon as the verdict passed, and that was holden to be maintenance in him, 18 E.4. 1: and 2. See the case of conspiracy, 22 H:6:36:

An Attorney cannot promise a reward, but a Counsellor may take part of the Land for his fee: And one may iustifie the return of a panell as Bailiff, and traverse the maintenance, 13 H.4.19.

**XV.** *Where*



XV. *Where Maintenance may be justified by Pledge, Mainpernor: Bayle, &c. where not.*

**P**risot sayd, that a Surety or Main-pernor, or a Baylor of the body &c. cannot intermeddle in the suit, but may come to the barr, and see that the parties appearance be recorded, and he who is Surety for the Peace, may not intermeddle in a *Scire facias* against the principall, for the breach of the peace, H. 34. H. 6. 25. and 29. But the Mainpernor of him who is arrested in London, &c. may promise a reward to the Attorney to be diligent, by Danby, and Wangford, and by Wangford, he may give money, but *Quare* of that, but the Bayle upon a *Cepi corpus* returned in Bink, cannot maintain, nor a surety for the peace, for they are but to yeild a paine, and not the principall. Littleton sayd, that Sureties in a writ of Error, may speak to the Councell, but Prisot sayd, that in trespass against two, if one of them do make default, he cannot maintain the other in the issue upon the principall, but he may as to the damages, *Quare*, H: 32 H: 6: 29:

And the Main-pernor in debt may well sue to save his maynprife, and some said, the same was no maintenance, 14 H: 6: 6: Bar 15:

Brian thought it a good bar in generall maintenance, to say, that he took the party in the first Action to Mayn-prife, 14 H: 6: 6. 18 Edw. 4. 12.

XVI. *Where he that is nonsuit shall have maintenance.*

**A** Man may have an Action of Maintenance after that he is nonsuit in the Action in which, &c, P. 33. E. 3. Maintenance 26. against 7 H: 4: But Maintenance well brought after discontinuance, P: 3. H. 6. Maintenance 2. vi. 7 H: 4 30. The Book is not contrary to 33 E. 3. but the Writ shall abate, supposing *Affisam captam*, where it was not *Capta*.

XVII. *Where a man shall be punished for Maintenance, although no Record be of the Principall Suit.*

**I**N Maintenance upon an Appeal of Maheim, it was said, that no Process was sued in the Appeal but an Attachment, and that returned *Non est inventus*, and afterwards the whole was discontinued, by which, although the Statue be generall, viz. That it is not lawfull to maintain, yet it is to be meant if the party be grieved, which he is not here, &c. But the Court said,





**XX.** What shall be said Maintenance, to cause a man to be indicted.

**P**risot saith, that 7. shall have Maintenance against him that laboureth that I am indicted, because it is the Kings action, *Passon* contrary, 22 H. 6. 5. See the Statute called the definition of conspiracy, 33 E. 1. What Maintainors are conspirators.

**XX I.** Where he that recovereth shall have maintenance.

**I**f I do recover against the Defendant, yet I shall have maintenance against every one who hath maintained in the action, for then the Statute is a prohibition, 7 E. 4. 15. Maintenance 17.

**XX II.** Where Maintenance will ye for undertaking, without maintaining in fact.

**I**n Maintenance, it was supposed, that the Defendant gave money to F. to distribute to the Jury, and it is not surmised that he did distribute it to the Jury, yet it is good. *Passon*, if a man give money to Jurors to deliver their verdict, it is maintenance, though they give no verdict, and although the gift were before they impannelled, vi. 22 H. 6. 5. 28 H. 6. 7. That it is maintenance to give money to distribute, without shewing to whom to distribute it, and if the other doth distribute it, it is maintenance in him also, 31 H. 6. 1 and 2: But he that takes upon him to maintain, and doth not maintain, shall not be punished, 9 H. 7: 18.

**XX III.** Where a Bill shall be sued of maintenance in the presence of the Court.

*M. 6. Jacobi in the Star-chamber, It was adjudged by the whole court, that if a man do assist one who is plaintiff in that court, it is not maintenance, because it is for the benefit and advantage of the King; but to assist an informer upon any penall law in another court is maintenance, for which he shall be punished.*

**I**t was holden, that a bill of Maintenance lyeth, *Sedente curia*, against every stranger or minister who doth maintain, and although the bill doth not expresse, that he who maintains is present in Court, yet if it doth appear that he doth maintain, *Sedente curia* it is good, otherwise it is of a bill in *Custodia Mariscall*. and it was holden, that if a stranger in another county do maintain here by his oath, a bill lyeth against him, 22 H. 6. 24. and 26. Bill 3.

**XX IV.** Upon Maintenance in what Court this writ lyeth.

**I**t is holden that maintenance lyeth for maintenance in ancient demesne, *Lex hoc sequitur*, that it lyeth upon maintenance in a court Baron, M: 8. H. 5. 8. & it lieth upon an attachment in Chancery, 19 E. 4. 3. and it seems it lieth upon maintenance in a *Subpoena*, *quare* 15 H. 7. 2. and the Statute of 20 E. 3. c. 3. forbids maintenance in the Kings courts or else where, and the Stat. of 13. R. prohibits maintenance in the country or else where, for the penalty there at the will of the King, and the Stat. of 32 H. 8. forbids maintenance in the Chancery, White-hall, Star-chamber or else where where of land is holden by patent, commission or writ, upon pain of every offence 10l. if it be sued within the year, & maintenance shall be enquired of, *ex officio*, by Justices of *Nisi prius*, 4 E. 3. c. 10.

# *Champerty and Maintenance.*

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The statute against redeemers doth not appoint any certain pain 20 E. 3. c. 4. but the statute of 8. E. 4. appoints 5 l. by the month against the retainor and the servant for using of the Livery &c. and 5 l. for the giver, and 32 H. 8. c. 9. gave 10 l. for every offence against an embracor, and the statute of 19 H. 7. speaks that the maintainor or embracor in an inquest of riot shall forfeit 20 l. and be imprisoned. None shall give Judgement in the County Court, but a due officer. *West 1. cap. 33.*

Justices of Peace shall inquire of Maintenance by Statute of 37 H. 8. cap. 7. *Execution of Statutes 4.*

See now the Statute of 32 H. 8. cap. 9. against Champerty, and bringing of pretended Rights and Titles, upon which Statute and the Provisoos, note, these points hereby adjudged.

1. That if A. be owner of the land in possession and B. who hath no right to the land contracts with another for the land, although the grant be utterly void, yet the grantor and party are both within the Statute.

*Plow. com. 80. in Partridge case*

2. That if the disseisee, who is out of possession contract with another for the land, he hereby maketh his right which was good apprehended right, and the grantor and grantee are both within the Statute.

3. That whosoever hath the ownership of the Land, that such an owner may at his pleasure bargain and contract for the land, and need not stay a whole year before he make a sale or contract for the same: & therefore the mortgagor who hath redeemed his land, may sell the same within the year, so if the disseisee release to the disseisor, the disseisor may sell the land within the year, and is out of the Statute. So if a man was out of possession, and recovers the Land in *ejectione firma*, and is put in possession by a Writ of *Habere facias possessionem*: he may sell the land presently, so it was adjudged, 36 Eliz. in Com. B. in *Pages case* 7 Car. Regis in the Kings Bench, in Sir John Offleys case, and H. 8. Car. in the Kings Bench, in *King and Hills Case*.

*6 E. 6. Bri. Maintenance 38.*

4. If the disseisee disseise the heir of the disseisor, although he hath an ancient right, yet because his possession is not lawfull, if he sell the land before he hath been a year in possession, he is within the Statute, because the heir of the disseisor hath right to the possession.

*C. Lis. 3 69.*

5. That the buying of a Lease for years is within the Statute, and he shall forfeit the value of the land, but if a man make a lease for years to try his title in *ejectione firma*, it is out of the Statute, unless it be to a great man to sway and contenance the cause.

*M. 31 Eliz in co. B. Finch and Cockrams case.*

6. That a custome is right, or a pretence to it is within the Statute.

7. That if he be Tenant for life, the remainder in fee by good title, that he in the remainder may obtain the pretended right of a stranger, because it is a means to extinguish suits and troubles.

*C. 4. part 26.*

8. That if the disseisor makes a lease for years or life, with the remainder over for life in tail or fee, he in the remainder cannot take any promise or covenant, that where a disseisor hath entred upon the land and recovered it, that he shall convey the land to him in the remainder, to avoid the particular estates.

*34 H. 8. 53. C. Lis. 3 69. acc.*



# COLOUR

**Matters of it.**

1. In what Actions Colour shall be given, and in what not.

**I**N a Writ founded upon the Statute of 5 H.2. the Colour shall be given, as in Trespasse, 33 H.6.54.37.H.6.31.

*Vide 7. Jac. in  
the Kings Bench  
in Pigot and  
Goddards Case,  
It was adjud-  
ged that co-  
lour shall not be  
given in an  
Ejectione  
firmæ, because  
the Plaintiff  
shall be adjud-  
ged in by Title.*

**C**olour shall be given in an action brought upon the Statute of 8 H. 6. of forcible Entry, 21 H. 6. 39. & so shall be in a Writ of Entry in the 2<sup>d</sup> bns of a disseisin to the father of the plaintiff, 9 Ed. 4. 13. So in a writ of entry of a rent of a disseisin made to the peredeceffor of the plaintiff, 19 Ed. 4.

Also in a Ravishment of ward, it is agreed, that if the Tenant do not claim by the Plaintiff, that he ought to give Colour, 2 E. 4. 27.

As to Trespasse, or Affiſe, theſe are the proper actions, in which Colour ſhall be given.

But no Colour shall be given in a Writ of Entrie, in the nature of an Affise, 21 H. 6. 18. because it is a *Præcipe* in its nature.

Also in Trespasse *de parsofraito*, or in Rescous no Colour shall be given, 13 H.7.11. So in an Affise of Coven against the Lord who improves, there needeth not any Colour to be given, 7 Ed.3.6,7.Br. Affise 423. See C.10 part in Doctor *Leyfields* Case, in what Case Colour shall be given, and the book there vouched.

II. What matter alleaged shall be a sufficient Colour and what not, as well for the Seisen of him who is Plaintiff, as for his estate.

**I**N Trespasse the Defendant said, that J. S. was possessed of certain goods, and made the Defendant his Executor and died; and that he seized the goods and delivered them over to the Plaintiff to re-deliver back unto him, and he would not re-deliver them; for which cause he seized the goods, and it was holden no good colour, because he did not acknowledge

knowledge the property of the goods to be out of himself, 28 H.6.4.

So in 21 H.6.36. In Trespasse for charters, &c. It is now pleaded that the property was to J. N. who bailed them to the Defendant, and the Plaintiff took them, and that he did retake them, but in the first case the case had been, that the Defendant did deliver them to J. S. who gave them to the Plaintiff, and he took them by force thereof, and that the Defendant did retake them, that had been good, and so is it holden in 7 H.6.31. So it seems by the Book of 21 H.6. If he had pretended that one J. S. was possessed of them and bailed them to W. P. who gave them to the Plaintiff, who took them, and J. S. did retake them, and gave them to the Defendant, for in those cases he had colour by force of the gift, because he had property thereby: So as it appeareth by these cases, that he ought to alledge a property or seisin, although it be by wrong, and that also is proved by the cases following.

In 21 H.6.40. In Trespasse the Defendant said that J. N. was seised and enfeoffed J. B. and that the Land descended from J. B. to R. and from R. to his Wife, and that the Plaintiff claiming it by force of a Feoffment, by the Heir of J. S. where nothing passed &c. and holden a good colour notwithstanding his estate was by wrong, because he was not seised as here, because his father did enfeoff J. B. So in 7 H.4.14.

The Defendant did justify by the Kings Letters Patents and gave colour by Letters Patents of the same King made unto him during the first estate, but 19 H.6.20. in Trespasse for taking away of his sheaves of corn, The Defendant said that he was Parson, and took them as Tithes, and that the Plaintiff claiming as Parson, whereas he was never instituted nor inducted &c. and it was holden no good colour, because he did not give any colour to him, but as an usurper.

But 11 H.4.84. It is a colour to say, that the Plaintiff entred claiming as heire, whereas he was a Bastard by *Pafton*. But by *Pigot*, 38 H. 6.7. It is no colour to say, that the Plaintiff entred as heire where he is a transgressour; no more is it to say, that he was a Bastard as before, if he do not say, that he is Bastard, *Higne*.

Also in 2 Aff.7. It is said, that it is a good Colour; that Plaintiff entred claiming to J. his father, who was brother of the Defendant, but J. was a Bastard, but to say the Plaintiff did enter as Heir of J. who was a Bastard, generality is no Plea, for he doth not admit any privity betwixt him and the said J.

Note also that Colour in Trespasse is tolerable, if it be any matter which doth pretend a difficulty to the Lay people, C.10. per Doctor *Leyfields* Case, otherwise the Defendant ought to plead the generall issue, and therefore it is a good Colour, that J. N. granted to him the Rendition, and the Tenant for terme of life died, and that he entred by force of that grant where the Tenant never attuned, for the Lay people do not know whether the Rendition do passe without attunement or not.

. So.



So if the Tenant saith, that he leased for life, and the Plaintiff did surrender, for it is a doubt if it may be without Deed. So that the Father of the plaintiff did lease for life, and afterwards that he did release unto him, and that the Plaintiff supposing him to have died seised, entered, for it is a doubt to the Lay people, if by this Release the Fee doth passe. So if the Defendant saith, that the Father of the Plaintiff did enfeof him, and that afterwards he doth suffer him to occupy the Land, and that the Plaintiff supposing that he died seised did enter; but if the Defendant saith, that he was seised untill by the Plaintiff disseised, upon whom he entred, it is no good plea, nor colour, so that the plaintiff was younger son, where he entered as heire, or that the Defendant leased unto the father of the plaintiff for life, and the plaintiff supposing that he died seised in fee entred, for these cases are not alwayes dubious to the Lay people, 19 H.6.21. where the case is notably argued.

Also in 24 E.3.50. It is a good colour, that a woman was seised and took a husband, and had issue T. and that the Husband and wife died, T. died without issue, and that the Tenant did enter, and that the plaintiff as heire of the part of the father, did enter where the land came on the part of the Mother, because that is a doubt to the Lay people to whom the land should descend.

8 Eliz. Dyer 246. In an Assise of Land in *Middlesex*, the defendant pleaded a Lease for years made unto him by one F. H. the name *de Missagio in Surrey, & omn. terrarum nuper cum eo dimissum*, and added the time to be the Land in the plaint, and so he was in without wrong, and the plaintiff did demur, because there was no colour given to the plaintiff by it, and it was here a *Quare* if he needed any colour, but the better opinion of the court was, that the better form of pleading had been, that F. was seised *tam de terris quam* of the house, and demised &c. *per nomen* &c. 29. See C. 10. part Doctor *Leyfields Case*.

### III. Where Colour shall be good by an estate determined, and defeated, and where not.

**I**N an Assise, the Tenant said, that I. N. did lease the Land for life unto the father of the plaintiff, the remainder to the Tenant, & the father died, and that the Tenant entred, and the plaintiff supposing his father died seised in Fee entred; and it was holden a good colour, 9 H.4.3.

Also in a Writ of Entrie in the *quibus*, the Tenant said, that I. did recover the Mannor of J. against C. whereof the Land in demand is parcell, whose estate of B. the Tenant had, and that the plaintiff claiming by a Deed made by the said C. did enter, & it was holden good colour.

So to say that the Tenant was seised, until by I. S. disseised, & the plaintiff claiming by a deed made by I. S. entred upon whom the Defendant did re-enter, and yet the estate of him by whom he claimed his estate was defeated, 9 18 by the whole Court.

Also if the Defendant saith, that he gave the Land upon condition, or delivered the goods upon Condition. So in Trespasse, it is a good plea, that he bailed the goods in pledge, and that he had redeemed them: So of Bailment of goods to manure his Lands, and the reason is because that the party had a good interest, untill he entred or seised the Lands and goods, and all this is agreed, in 5 H.7.18.

Also if the Defendant plead that the King gave the Lands to him in tail, and that he let them to the plaintiff at will and entred, it is a good Colour *per Curiam*, 18 E.4.10.

So that the King leased to the plaintiff at will, and that afterwards he gave the Lands to him by his Letters Patents in Tail, 18 E.4.15. But by *Littleton* here, if the Defendant saith, that I.S. was seised, and enfeoffed him, and after Entry that he enfeoffed the plaintiff upon whom he did re-enter, the same is no good Colour, for it appeareth by my plea, that his estate was destroyed, *ad quod non fuit responsum*.

Also in a writ of Entry upon disseisin of a rent unto the Predecessor of the plaintiff, the Defendant said, that I.N. was seised of the said rent in fee, and granted the same unto the Predecessor of the plaintiff, and after I.N. died, the Predecessor died, and the Tenant as son and heir entred, and it was holden a good Colour by all the Justices but *Bryan*, in 19 E.4.3. but the opinion of *Brook* in abridging of the case is, that such a Colour by an estate determined, is not good, because no doubt there can be of it to the people.

In 38 E.3.18. It is holden a good Colour, that the plaintiff entred into the Land of the Defendant, and sowed it with corn, and the Defendant entred, and so is the Book of 12 H.7.25.

3 H.6.9 In Trespasse the Defendant said, that the Predecessor of the plaintiff leased at will, and afterwards resigned, and holden good by colour, by *Strange* and *Martin*.

Also in 38 H.6.7. It is said, that in Trespasse, that I.S. abated, and endowed the wife of him that died, and the plaintiff claiming by I.S. &c. no colour, because the estate of the abettor is gone by the endowment.

2 E.4.17. In a Writ of Entry, in the nature of an Assise, the Tenant said, that his father was seised in Fee, and leased unto N. for life, N. died, and the lessor did enter as in his reversion, & died seised, and the Tenant is here entred, and the demandant claiming by a Deed by N. entred, and holden no colour, for by the death of Tenant for life his estate was determined. So to give colour by a disseisor and to confesse an entry upon him, or by a Feoffee upon condition, and confels an Entry upon him, is no colour, because it appeareth that their estates are avoided by entry, *quare* if there be any difference betwixt this case and the case put before, M. 5 H.7.18.

Note, that in time H.8. it is put for a rule that colour shall not be given by a possession defeated, contrary of an estate defeated.

In trespassse, the Defendant gave colour, by a gift of the Testator, where he did not give, and no colour, 19 H.6.12. *contra* by a Feofment where nothing passeth, for the Feofment is admitted, 18 E.4.9. 38 H.



38 H.6.5. Colour was this, that *7. S.* was seised, to whom *7. D.* did release, and gave colour by *7. D.* and not good.

IV. *By what persons Colour shall be given, and by what not, and to which persons not.*

Colour shall not be given by ones self in the conveyance, but by him by whom he doth Commence his Title, 22 *Ed. 4. 24. 10 H. 7. 14.* for if it should be otherwise, then the first part of the Conveyance should be out of the Book, but against that is the book in 21 H.6.32. for here it is said, that he may give Colour by the one or the other, and *L. 5. E. 4. 134. acc. 15. E. 4. 31.* of which *Brook* makes a doubt.

Also Colour shall be alwayes given to the Plaintiff, and not to the Defendant, also if the Defendant saith that *7. S.* was seised, and that *7. D.* claiming by a feoffment of the said *I. S.* where nothing passed, entered and enfeofed the Plaintiff, and in that case because the Colour was given to a stranger, it was said, 33 H.6.7. *Petit. Br. 115. acc.*

Also Seisin in fact or in Law shall be alledged in him by whom Colour is given, 2 *E. 4. 5. 34 H. 6. 1.* Also see 15 *E. 4. 31.* where the Defendant gave Colour by himself, and it was good.

V. *Where Colour for the Moity shall be sufficient for the whole.*

IN 19 H.6.46. in Trespasse the Defendant said, that *I. S.* was seised and had issue two daughters and died, and conveyed the Land to himself, and gave Colour by one of the Daughters and good, also here 19 H.6.49. in Trespasse, the Defendant said, that *I. S.* was seised, and enfeofed Husband and Wife, and gave colour by the Husband and good, the same Law, 33 H. 6, 7. by *Prisot* in a generall Action of Trespasse, but *contra* in Trespasse upon the Statute of 5 H. 2. for the Writ doth comprehend how he entred into the whole, and therefore he ought to answer it.

First, it is to be noted, that alwayes colour shall be given upon a Plea in Barre, for if he plead to the Writ, there needs no colour, as appeareth by 21 H.4.4. the same Law where the Defendant prayeth in aid, 10 H. 7. 10. See C. 10 *part Leyfields* case, and there it was where the King was prayed in aid of, and so in lieu of Voucher, which is in nature of a Bar.

Also where the Defendant binds the Title of a Plaintiff by a feoffment with Warranty, there needs no colour, the same Law of a Release, Fine, Corodie, Disseisin, and Re-entrie, *Pet. Br. 115. 37 H. 6. b. acc.*

Also if the matter be matter in law, there needs not any colour, 36 H. 6. 7.

## Colour and Matters of it.

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He who justifieth for Tythes as Parson, needeth not give colour, *Per Brian*, 21 E.4. 18.

He who justifieth as servant, and he who conveyeth title from the plaintiff, needeth not give colour; contrary if he convey title by a stranger, C.10. pars. *Leyfields case*, 18 E.4. 13. 2 E.4. 8. 13 H.7. 12.

Also if the party claim property, he needeth not give colour, as where he justifieth damage fealsance, by *Catesby and Brian*, 12 E.4. 12.

See the opinion of *Brian*, 21 E.4. 18. and 65. That if a man justifieth for tythes, or Wreck, or Waife, or for any matter of Record, that the Defendant needeth not give colour, *Quere* by *Brook*, and the book of 12 E.4. 6. seems to agree it, for there it is said, that if the Defendant sayth that the goods were stollne, *Per quosdam ignotos*, there needeth no colour, but if he saith, that *J.S.* was possessed of the goods as of his own goods, although that *B.* stole them, there he ought to give colour, for he doth not admit any property in the Plaintiff, the same Law if he saith, that the goods were sold in market overt, he shall not give colour, but if he saith, that *J.S.* sold them to him, he ought to give colour, 3 E.3. acc. But 14 H.6. 2. He ought to give colour in case of Waife, but the Reporter is contrary to the book, because he admitted a property before the stealing of them.

9 E.4. 22. Colour given by him who justified for Wreck, and 34 H.6. 10. acc. *idci Quere*.

Also if a man plead that it is his free-hold generally, he shall not give colour, 32 H.6. 12 E.4. 5. 6 H.7. 14. contrary of a feoffment, or if he convey the freehold specially by a stranger, for then he doth not admit any interest in the plaintiff, as the case is in 12 E.4. 6: and that appears also by 2 E.4. 8.

## M m Collusion.



# COLLUSION, AND COVIN.

## I. What Feoffments shall be within the compass of the Statute of Marlebridge, Chap. 6. what not.

See 6. part 76.  
acc. Com. 82 ac.

Vi. C. 4. part 4.  
in Vernons case  
untill the sta-  
tute of 4 H. 7.  
the heir of  
cestui que use  
should not be in  
ward, yet see  
27 H. 8. 9.  
where it is ad-  
judged, that if  
cestui que use  
after the Sta-  
tute of 4 H. 7.  
had made a  
feoffment by  
collusion to de-  
fraud the Lord  
off his ward, the  
same is taken to  
be within the  
Statute of  
Marlebridge  
cap. 6.

**T**He Statute is, *De his qui primo genitos seofare solent*, &c. yet if the eldest son dyeth, and he enfeoffeth the youngest, the same is within the equity of the Statute, *Plin. Com. 59.*

If Lord and Tenant be, and the Tenant alieneth in fee by collusion, the feoffee doth re-infeoff the feoffor for life, therein in taile to the son, Lessee for life dyeth, the heir enfeoffeth a stranger by license of the heir puts in his cattell, the Lord doth distress them damage for a year, the stranger brings a Replevin, and recovers; because it was not averred that the re-infeoffment was by Covin, as well as the first feoffment, but if he had averred it, then the heir should be in ward, notwithstanding the particular estate for life, but by *Moyle*, If the Tenant lease for life to a stranger, the Remainder in fee to the son, the same is not within the Statute, because the stranger might live longer then the son, 33 H. 6. 14. Also for another reason, because that Collusion was not in all the Estates, and therefore if a man maketh a feoffment by collusion, and the feoffee maketh a feoffment over, *Bona fide*, the collusion shall cease: Also if the Tenant alieneth to a stranger in taile, the remainder in fee to his son, and afterwards Tenant in Taile alieneth to his Son, the same is no Collusion, by *Moyle*: Also if a Feoffment be made unto a stranger, to the intent to marry his Daughters, and afterwards to re-infeoff his son, the same is no collusion with the statute, but contrary if it be to re-infeoff his Heir immediatly. Also if such a feoffment be made to enfeoff the Heir and a stranger, and to the heirs of the son, the same is no collusion, by reason of the benefit which may be to the

the stranger: Also it is there admitted, that if the father giveth lands in taile to the son, that the same is within the statute, but see 27 H: 8: 10: contrary.

A man maketh a feoffment to two, having issue 2 sons, one of the age of 2. years, the other of the age of one year, and made his will, that his Feoffees should have the free-hold for twenty years, and then his son, to enfeof his sons if of full age, and it was holden to be collusion, notwithstanding that the eldest son was of the two years at the time of the feoffment, 6 R.2 collusion 47:

The Tenant enfeofeth a stranger, to the intent to enfeof his son when *Vi C. Litt. 7. If* he cometh to the age of one and twenty years, the same is not collusion, *the Father had* because the Father may live untill he cometh of full age, also the feoffee *made an estate* hath an interest for the time, if the Father dyeth before the sons age of one *for life, or a gift* and twenty years, but if the feoffment had been to re-infeof the son after *in taile, the re-* the death of his father, the same had been collusion. 10 E. 4. 2. *mainder to ano-* *ther in fee, the* *same was cut of*

*the Statute of Marlebridge, But now at this day the son shall be in ward, for a third part of the land, and his body, the same law, if he enfeofed his eldest son, and a stranger, and to the heirs of the son, he shall be in ward for his body, and the third part of the land.*

It is cleer that the same cannot be collusion during the life of the father, 33 H. 6: By *Prisot*, If a man maketh a feoffment and livery upon condition that the feoffee re-infeof his heir, when he cometh of full age. although that the deed of feoffment be simple, yet it is a feoffment by collusion, 49 E. 3: 20: acc:

*Vi C: 6: p.* Sir George Cursons case, and *vi C: 8: p: 83.* in *Leonard To-* *vies* case, if the Father doth enfeof his younger son, or other to make a joynture to his wife, or for the advancement of his daughter, or for the payment of his debts, and afterwards he conveyeth his land to his eldest son and dyeth, his heir within age, he shall be in ward for his body, and for the third part of the land, and that by the Statute of 32 and 34 H: 8: But if the eldest son, *bona fide*, purchaseth land of his father for valuable consideration, he shall not be in ward, nor pay prime seisin: 14 *Eliz: Dyer*, C. 2: p. in *Binghams* case, if the father convey his lands to his middle son in taile, and the remainder to the youngest son in fee, and dyeth, his eldest son within age, he shall not be in ward by the statute of 32 and 34 H: 8: for that it is out of the Statute, the 20 *Eliz: Dyer*, 361: If the Kings Tenant doth enfeof his brother, to the intent to infeof his heir male of full age, where at the time he had not heir male, and the father dyeth, and then an Heir male is born, if this collusion be found by office, the Heir shall be in ward for a third part of the land:

*Vi: 10 Eliz: Dyer* 268: *C: 1: part, 47:* where it seemes he shall be in ward for the whole, by the fist by collusion, *vi: C: Lit: 78:* but for a third part:

If the Tenant levieth a fine *sur release*, the Lord may aver the same



to be by Collusion, 7 H.4.15. 12 H.4.16. where a Fine was pleaded, the Lord did award the same to be by Collusion, to the intent to enfeof his heir at full age, but see 38 E.3.Br.Gards 74. that against a Fine *Sur Causans de droit come ceo*, no Collusion shall be awarded, because the Fine is executed, the doubt that a Fine should not be within the Stat. was, because the Statute is, *De his qui primo genitos seofare solent*, yet a Fine is a Feoffment upon Record; and therefore holden to be within the Statute.

A Devise is not within the Compasse of this Statute, as appeareth by the better opinion of the Book in 27 H. 8.7. the Lord *Dacres* case, for it shall not be intended, that he made the Devise by Covin.

If a Feoffment be made rendring a small Rent, during the term that his heir shall be within age, and afterwards the double of the Rent, the same is Collusion awardable, See *Old N.B.* 96.

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*What Lords are within the provision of the Statute of Marlbridge, cap. 6.*

**I**F the Kings Tenant holdeth other Land of another person by Knights Service, and alieneth the same by Collusion to enfeof his Son and heir apparent at his full age, and dieth, the heir within age, and Ward of the King, by reason of other Land holden *in Capite*, the King cannot award the Collusion, for that is given to him who is immediate Lord, by *Hall & Gascoign*, 9 H.4.6 but afterwards *Hull* said, that he would be advised of it: But clearly by *Tirwitt*, if a man who holdeth of the heir in ward maketh a Feoffment by Collusion and dieth, the Lord may award the Collusion for now for the time he holdeth immediately of the Lord; yet *Fitz.* to Collusion 12. by *Thirning* and *Hanckford contr.* as to the first case, for the Prerogative doth extend for to award the Collusion of the Land aliened, as to have the Land not aliened, *Quere.* For *Brook* makes a doubt by what Law the King may award the Collusion, *Nota* 12.H.7.19. *Marrons.* It is admitted, that he may take benefit of the Statute, but he shall be put to his *Scire facias*; but *quare* also of that, for if it were apparent Collusion, he shall have the same benefit which other Lords shall have, and see here in the end of the Case, that *Frowick* vouched the Book of 9 H.4. to be adjudged, that the King is not within the compasse of the Statute in this Case, but the reporter saith, that the Book is against it, 12 H. 7. 8.

But if the covin had been at the common law, it seems the Lord might award it wel enough, for he who hath wrong may award it to save his right and therefore if Tenant in Tail doth discontinue, and afterwards nine dayes before his death he enfeofeth his Son of other Land which should be

be affets to him, to the intent to extort the warranty, the Discontinuee may avward that covin; 34 E. 1. *Garranty* 88.

The Feoffee upon condition, because he had broken the condition, did cause a stranger to bring a Formedon against him, to the intent to bind the Feoffor, the Feoffor may award that collusion, and yet he is a stranger to the action, 7 H. 4. 19. also a Termor shall award covin, 14 H. 8. 3. and the Action was brought against the Lessor, C. 2 part 55 acc.

*When the Lords may enter, when not, but are put to their action.*

**I**F the Father enfeoffeth the Son and heir by collusion, and dieth, the Son within age, the Lord may enter and seise the Ward, for the same is collusion apparent, and is not within the meaning of the Statute of *Marlbridge* cap. 6. But if the father enfeoffeth a stranger to enfeoff his heir, the Lord cannot enter, but he is put to his Writ of Ward: the same Law where the Feoffees make a Feoffment over he cannot enter upon the second Feoffees, but if the heir himself be one of the second Feoffees, and it is awarded, that the second feoffment was by covin as well as the first, the Lord may enter upon the heir, who is in by the Feoffment of his Father, or the Feoffment of his Feoffees, and here the covin shall be tried, but where he cannot enter, then the covin shall be tried by an action brought by him, for the same is not covin apparent but awardable, See 33 H. 6. 14. where the case is notably argued.

*Between what persons Collusion shall be inquired of by the Statute of West. 2. cap. 36. of Mortmain.*

**T**HE Statute of *West. 2. cap. 36.* is, *Cui viri Religiosi & alia persona Ecclesiastica implacite at aliquem &c. & sic implacitatus fecerit defaltam.* The Statute is not to be intended where a spirituall person impleads a Lay man, but it is also to be construed where one spirituall person impleads another spirituall person, for Collusion is the cause of the making of the Statute, which covin is prohibited in all persons, and that the Law is so, see 8 E. 3. & *Old N.B.* 177. for here the case was, that an Assise of *Darrein presentment* was brought, and the Plaintiff was non suit, for which a *Quale fuit* issued, and there the suit was between two spirituall persons, and the opinion of *Br.* in abridging the case is, that one Religious person cannot alien to another Religious person, and to that purpose see *F. N.B.* in his *N.B.* 222. D. where he puts the case, that if an Abbot will give Lands or demesns in Mortmain to another Abbot or Prior, or other Body politique, yet he ought to have the Licence of the King so to do, by reason of the words of the Statute of *Mortmain*, *West. 2. cap. 36.*

*In*



*In what Case Quale Jus shall issue forth, in what not.*

**I**N a Writ of Entry *sine assensu capituli*, the Tenant pleaded in barr, and traversed the Entry, and it was found for the Demandant, but the Collusion was not enquired of, for which cause the Court awarded a speciall writ for to inquire of the Collusion; for that a *Quale Jus* shall not issue forth but upon a default; for where the party doth recover by issue tryed, the Jury ought to inquire further of the Collusion, and to that it shall be in the nature of an inquest of Office; for an attaint lyeth upon it, 33 H. 6. 25. 14. *Ass.* 13. 44. E. 3. 41.

40 E. 3. 37. in Wast, the Writ was brought by an Abbot, the Sheriff returned upon a Writ of Enquiry of the Wast, the Wast and the damages 20 marks but the Collusion was not inquired of, for which cause a *Quale Jus* issued forth, but otherwise it should have been, if the triall had been before the Judges, for then those who tried the issue, should also have enquired of the Collusion, as the book in 38 E. 3. 12. is.

14. *Assise* 13. Br. *Quale Jus* 11. In an Assise the Defendant made default, and it is there holden, that the Assise ought to enquire of the Collusion, and no *Quale Jus* shall issue forth, for the Jury are present at the Bar, contrary in Wast *Quod nota.*

50 E. 3. 22. In a *Cessavit* by an Abbot, the Tenant did appear and confessed the Tenure, and tendred the arrearages, and before the party had Execution, a *Quale Jus* was awarded upon the confession.

45 E. 3. 18. In a *Præcipe quod reddat*, the Tenant vouched an Abbot, the Abbot vouched over one who made default, for which the Tenant had a Writ of Enquiry against the Abbot, and the Abbot over, but Execution did cease untill a *Quale Jus* issued forth to enquire of the Collusion, because that the vouchee made default, but if the Recovery had been by action tried, then the Collusion should not be enquired of, because it is out of the Statute.

A man brings an Assise, the Tenant plead, no wrong, no disseisin, which is found for the Demandant, yet the collusion shall be enquired of, but not by a *Quale Jus*, and yet the Statute is. that the collusion shall be onely enquired of upon default made, 20 *Ass.* 14. also 3 E. 4. 13. By *Jenny*, if a Religious man doth recover by confession, rendition, or action tried, the collusion shall be enquired of.

In a *Cessavit*, a *Quale Jus* issued forth, and it was found that there was no collusion, and for fear of Mortmain, it was found that his Title was by succession, 21 E. 4. 5. & 19 E. 4. 5. and yet the Judgement shall be of the Land and not of the Seigniorie, *quod nota.*

*In what actions Collusion and Covin shall be enquired of, and in what not:*

**I**N all reall actions where any free-hold shall be recovered, collusion ought to be enquired of, as *Ingressu sine assensu capitali*, 23 H. 6:25: In a *Cessavit*, 50 E. 3. 12. in *Assise*, in every *Precipe*, 14. Ass. 16. So in waft especially grounded against Lessee for life, the collusion shall be enquired of, but contrary against Lessee for years, 3 Edw. 4. 14. 10 H. 7. 3 but for the damages judgment shall be given presently, 40 Edw. 3. 37. In a *Juris utrum*, where the issue is upon the right, no collusion shall be enquired of, 37 Edw. 3. Collusion 15. In a replevin, in a writ of right of Ward, *Ejectione firme*; *Quare ejecit infra terminum*, *Warrantia charta*, In Covenant to levy a fine where an Abbot is vouched, Collusion shall be enquired: So 19 Edw. 3. Upon execution by *Elegit*, 14 Edw. 3. upon a writ of enquiry of damages, collusion shall be enquired of, and Execution shall cease, as well for the damages as for the Land, for if the collusion be found, he shall not have damages, *Quare* if the same Law be in a writ of Waft: Also in a *Quare impedit*, the Collusion shall be enquired of, because it is not in the nature of a Trespasse; but it is to recover the Church, and therefore the Collusion shall be enquired of, 42 E. 3. 27. but contrary in an annuity, for that chargeth only the person, 16 Edw. 3. 10 Edw. 4. 6. 34 H. 6. 37. 20 H. 6. 7. 6. E. 3. 21.

10 H. 7. 3. In Avowry no collusion shall be enquired of, because he recovers nothing, but to have a return: also in a Writ of entry, *Ad communem legem*, there shall be no enquiry of Collusion, because it lyeth only where Tenant by the curtesie, or Tenant in dower do alien in fee, and here he is to recover nothing, but to preserve his Estate of the Reversion, But see before that in a Writ of Entry, *Ad terminum qui preterijt*, the Collusion shall be enquired of, and so in a *Consimili casu*.

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*Where the Collusions shall be tryed.*

**I**F a *Precipe* be brought by an Abbot, and a forraine release is pleaded, and it is found for the Abbot, those of the forren County shall not try the collusion, but it shall be tryed where the land is, 33 H. 6:25.

In waft brought, the Defendant pleaded a license in London of Land in *Essex*, and the license tryed and found for the Plaintiff, and he did enquire of the collusion in London, and by *Mortdancer* the collusion shall be tryed where the land is in *Essex*, because they have the best conclusions of it, for the Collusion goes to the whole matter, and it is not like unto Trespasse, where a Release is pleaded in a Forraigne County, for



for here they shall enquire of the damages, because it is but accessory, and he vouched 11 H.4. to agree error, but *Frowick* held that the collusion might be enquired of in any of the places, and especially in this case of *Wast*, where the enquiry lieth much in the discretion of the fathers, and it is in the personalty, 10 G.7.3.



## CONDITIONS.

### I. Conditions where they shall be void.

**H**E whose cattel were taken in *Withernam*, took them from the Sheriffe, and gave Bond to keep the Sheriffe without damage, and the Bond was holden void by *Marcham* and *Rikkill*, because it was against Law, as an Obligation to keep the Sheriffe harmlesse of their embezelling of a Writ, and *Tbirn* said, That if I am bounden to save you harmlesse against all the world, it is void, because the condition is impossible, *M.2.H.4.10. Obligation 13. vide 8.E.4.12. Obligation 8.* agrees to the last case, that the whole is void, when the condition is impossible, but the contrary is holden, 2 E.4.3 by *Choke* and *Needham*.

One who rendred himself at the Exigent, bound himself to keep the Sheriff without damage of the Return, and he returned *languidus in Prisons*; and a new Sheriffe being made, the old was distrained to bring in the body, and lost issues, by the opinion of the Court, the obligation was forfeited, although he did not loose directly upon the same Return, but upon the sequel, and by reason thereof, *M.8.18 E.4.21.* and the Plaintiff needs not to give the Obligor notice of the damages, 8 E.4.12.

Debt upon an Obligation conditioned, if the plaintiff be not endamaged against the Bishop of *F.* of a collation by him whereof he was not charged, and distrained for the same &c. The Defendant did alledge that he made agreement with the Bishop, and also that he gave to the Plaintiff 100s. for the Distresse, and the last was holden a sufficient satisfaction to save the Obligation, *T. 41 E.3. Dett. 128.*

See that a condition to keep the Obligee harmlesse against a stranger to whom he is bound, seems to be void, because the stranger hath not to meddle &c. 21 E.4.63.

A condition to keep him without Damage in any action brought against

gainst him, is against law, because it is maintenance, and the whole is void  
11 E.4.28.

A generall condition to keep without damage, without any more, is  
void, vi.9.H.4. conditions 6. 2 H.4. 10. 8 E.4.13.

I I. Where a Condition is repugnant to the Estate, or grant, or  
war-anty made but in part, is good, where not.

**I**T was holden by all the Justices, but *June*, That the condition in a  
warranty by *Proviso*, that he shall not vouch, or that he shall not re-  
cover in value is good, because it doth not take away the whole grant,  
for he may rebut; but in a feoffment the proviso, that the feoffee shall  
not take the profits, nor shall commit waste, nor alien is void, but the last  
is a good condition upon a gift in tail, 7 H.6.4.7. condition 1. 21 H.6. con-  
dition 4. In the first case *June* would have it to be a good defeasance of the  
warranty, but not by the same deed of the last case, vi. 13 H.7.23. But a  
condition, that the Feoffee shall not alien to C. or to T. or that he shall  
not alien by deed, is good, contrary of fine, 10 H.7.11.

P 18. Car. Co.  
I. B. in *Barrow*  
and *Woods case*  
Debt, the con-  
dition of a  
bond was, that  
the defendant  
should not keep  
a *Mercers shop*  
in F. and if he  
did, that he  
should pay 40 l.

to the plaintiff, although that the condition did not restrain the party, totally of his trade, yet it was adjudged a  
void bond, vi. 2: H.45. c. 11: part 53: and so was adjudged, p. 44. *Eliz:* in the common pleas, *Rott in Pe-*  
*get and Batchelors case;* quare if there be not a difference between a promise and an obligation, for a man may  
promise or contract that he will not use his trade, but he cannot bind himself not to do it.

C. Lit. 123. A devise to one in fee upon condition he shall not alien void, so of a release or confirmation.  
But the feoffee may covenant that he will not alien, and good, 12 H.7. 13. So 43 A. 44. the feoffee may co-  
venant that he will not vouch or rebut, C. 6. part 41. at in *Midlways case.*

If land be given in taile, the remainder in fee to the heirs of the donee;  
upon condition to re-enter upon alienation of the Tenant in taile, this is  
good, which were not good if the fee be executed, 11 H.7.6.

A Rent was granted in fee, *proviso*, that the wife of the grantee shall  
not be endowed, it is a void condition, because it is for the advantage of a  
stranger, or because it is repugnant, but a *Proviso*, That shee shall not  
be endowed during the nonage of the heir, is a good condition, and she  
shall recover; but execution shall stay, &c. 22 E.3. Condition 12. 12 E  
3. Condition 11. But see, That if that Land be aliened over in fee, and  
the Tenant doth attorne, hee shall be esopped to claime this advan-  
tage.

Two grant, *custodiam parci*, taking such fees as T. had, *Proviso*, that  
that deed shall not charge the person of one of the grantors, the same is a  
void condition, 10 H.7.8.

N. p. III. Condition



III. Condition to keep without Damage, or to warrant & defend Land, how it shall be performed against a person certain, &c.

**N**Ote, If I be bounden to any one to warrant and defend his Land against all people, if he be put out of his Land by any man, the obligation is forfeited by reason of this word (*Defend*) *M.2 E.4.16.0.* otherwise it seems of the word (*Warrant*) *Quere Debt 71. See 18 E.4.20.* A difference where the Condition is, That *B.* will give him license, and where he shall have license, or in the last case, if he be disturbed by any, the Obligation is forfeited by *Littleton*.

Condition to keep the Obligee without damage against 1. to whom he was bounden, &c. it shall be a good bar, that before the day, the sayd 2. did deliver the Obligation to the Plaintiff, without that, that he was damaged before the delivery *38 H.6.23. Debt 65.*

IV. Condition or Covenant to be performed beyond the Sea,

**T**He Condition of a Bond which is to be performed beyond the sea, is voyd for the cryall, *Per curiam, 10 H.6. condition 2.*

A Condition to go with the obligee beyond the sea in warr is good, and if he depart beyond the sea, that shall be tyed by the Marshall. So a Condition, that such a ship shall come from such a port at such a day is good, but a condition that such a ship shall come *Presenti viagio* from *Burdeaux* to *Lynn*, is not good, but the Obligation remaines single, because the manner of the voyage cannot be tried.

*21 E.4.20. Debt, 98.* See the book, and a covenant upon such a deed is good, if the other will plead not his deed, otherwise it is if he plead performance, or challenge the deed, *21 E.4.12.*

V. Conditions of feoffment, Lease, or Gift, That if he alien, it shall remain to a stranger, &c. or if the feoffee do not pay.

**A** Gift in tail to the eldest son upon condition, that if he alien that the same shall remain to the youngest, adjudged a void condition, *21 H.6.33.*

So if the condition were, that upon such alienation the estate to cease

or that he in the remainder shall enter, the remainder is void, 21 H. 7. 12. See C. 3 part in Penman's case, That an estate for life, cannot determine nor cease without an entry. for it is there said, That the fee cannot cease without an entry, but an estate for life may. As if Lessee upon such a condition alien after Astornment to the grantee of the reversion, he may enter, 11 H. 7. 17. But otherwise it is of a condition, that he may enter. *Quere*, the difference, for an estate of free hold shall not cease by the death of *Cestui que vie*, until he in the reversion hath entered in fact, 18 E. 4. acc.

*Frisilian* saith, That if I give Lands in fee, rendering rent, and for non-payment, that the estate of the feoffee shall cease, and the land shall remain to a stranger, the same is good; and upon the ceaser, the stranger shall have a Forfeiture in remainder. *Which* such a case never happened, therefore fall advise of it, whether it be law or not, &c. 43 Ass. pl. 44. condition 28.

A gift in taile upon condition, that the donee, &c. may alien for the advantage of his issues, is good, 46 E. 3. 8. 8 H. 6. 24. acc.

A devise for life upon condition, that the devisee shall singe for the soul of the dead, the remainder over in fee, if the heir enter for the condition broken, he shall defeat the remainder, 24 Ass. pl. 17. Assise 281.

See more of this, *Perkins*, fol. 108.

VI. What words shall make a Condition in the Kings Grant, or in the grant of a common person, and when they shall be in the Nature of a Covenant, Condition, or Grant.

The King granted an Advowson to a Bishop, and that he might give it in Mortmain, it is no condition, but it is an election in him to give it in Mortmain, 43 E. 3. 34. conditions 7.

If a man maketh a Feoffment, and that the feoffee may pay the Rent, and for non-payment, that it shall be lawfull for the feoffor and his heirs to enter, it is a voyd condition, for he need not pay it. *Perkins* 144.

Debt by E. against P. upon an obligation which was endorced, *infra nominatus P. tenetur infra scripto E. pre fac. tamen E. vult & concedit, quod si dictus P. steterit ad arbit. A. &c.* Agreed that the words (*Vult & concedit*) are void, but the condition begins at the words, *Steterit*, which make a good condition, for the other are words of grant by the Obligee, where it was only the deed of the Obligor. But *Browne* said; That he might have pleaded, that it appeareth by the deed

be given in them upon condition, that if the donee do without issue, that the donor may enter, it is not a condition, because nothing is restrained, so if it be, if the Lessee do waste, that the Lessor shall enter, it is no condition, because it gives nothing but what the law gives before, See Com. in *Bingham's case*, *Se ipse velit inhabitare*, is not a condition, because it is not compulsory, but gives the party an election, which are not words properly conditional.

*Will. 1. re. 10* was granted to husband and wife, and if the husband do, during the wife, that she should have 10 l. and that if the wife do during the husband, that he should have 40 s. adjudged that the wife should have the 10 l. notwithstanding this limitation, because it is no restraining of the first part of the deed, but stands with the deed.



that the Obligor had granted that if &c. vide 21 H. 6. 31. Burne 157.

A feoffment rendring rent, and for non payment it shall be Lawfull to the feoffor and his heirs to take back the Land, this is a good Condition, *M. 6. E. 2. Entre Cony. 35.* And so it is of the word Retainer, *Perkins 143.* and *Perkins* saith, that this word, that he may lawfully enter for non payment is a good condition, 144.

In Assise the Tenant said, that he gave the same Land to the Plaintiff upon Condition (by Indenture shewed) that he should be this Squire in time of peace &c. and that the Tenant should find him a horse, cloath, meat and other necessities, and at what time that the Tenant should refuse that the Plaintiff should hold the Land discharged of the condition, provided notwithstanding if he be sick, that then he shall have the Land, and necessities, when he recovers, and is required and refuseth, that then the Tenant may enter, and alledged a request, and the Plaintiff said, that before the request, he required the Tenant to find him necessities, which he refused, so as he had cause to hold the Land &c. It was adjudged that the Plaintiff should recover, and that the Proviso should have relation onely to the Words subsequent, viz. if he be sick &c. and that the Land should revert upon request and refusall, which is not alledged by the Tenant, *H. 13. H. 4. Entr cong 57.*

Vide C. 2. part  
Cromwells case  
35 H. 8. Br 57.  
27 H. 8. 47, 48.  
when the word  
(proviso) shall  
make a Condi-  
tion, when a  
Covenant,  
when an excep-  
tion, and see  
here 3 things  
requisite to  
make the word  
(proviso) to be  
a condition.

1. That it do not  
depend upon a  
nother sentence.  
2. That it be the  
words of the  
Donor, Feoffee,  
or Lessor.  
3. That it be  
compulsory.

Vide f. Lit.

104. 4. Ma. Dy.  
138. The words  
Ad faciendum  
ea intentione

ad effectum, ad propositum, do not make the estate in the Land conditionall in the case of a common person, but otherwise in the case of the King. Vide 31. H. 8. br 35. Doctor and Student 129. Vide Blonden comment.

A Condition that my Feoffees (*si qui fuerint*) shall release to T. refer to the time past, but a Condition that I shall give all my goods (*si qui fuerint*) shall referre to the present time, so condition to be non suit in all actions (*si qui fuerint*) 35 H. 6. 13. & 14.

Lease by Indenture, Proviso that if the Lessor will occupy the Land, without letting it to farm, then the Lessee doth bind himself by the same Deed to remove upon warning given him &c. and it was holden by *Fitz.* and *Audley*, that the same was condition, and the clause that the Lessee binds himself, &c. should not defeat the effect of the Proviso, but declare the assent of the Lessee. So a Lease rendring Rent, upon condition if the Rent be behind, that the Lessor grants that the Lessor shall enter, and it was holden there a good condition, and so Proviso, that if the Lessor will occupy &c. without any more, otherwise it is of Proviso, if the Lessor pay 20 l. 27 H. 8. 18.

The King gave Land, to the effect that the grantee should give the same in Mortmain, this is a good condition to re-enter for not doing of it 38 H. 6. 35.

Proviso, That J. my Sonne being my Heire release, the same is good, and if J. hath an elder brother who dieth, now I ought to release, and so the present time taken for the time to come by *Fitz.* 27 H. 8. 17. If a man leaseth without impeachment of Waste, Proviso that the Lessee shall

shall not do Wast in *domibus voluntarie*, now if he do voluntary wast in houses, the Lessor shall have an action, and also for every other wast, and is not put to his Writ of Covenant, as if it were by another Deed, but yet this Proviso shall not defeat the estate, 9 H. 6 35.

A Lease made for life, Proviso that he shall not hold the Land after the death of T. the same is a limitation of the estate, and a Proviso may be an Exception onely, and the sequell of the Words shall expresse it, T. 27. H. 8. 17.

A Lease rendring rent upon condition, that if it be behind, that he shall enter and sell the Chattels for the Rent, the same doth not defeat the estate, 19 E. 3. Barre 280.

Eliz. Dyer 222. C. 2. part 72. Cromwells case a Lease for years, rendring rent, proviso, that in the time of vacation, the Rent shall be paid to the Chapter, the proviso was not a condition, but an exception.

VII. How the Condition of a Feoffment, to pay money to him, his Heirs and Executors, or by him, his Heirs or Executors, to whom, and by whom it shall be performed.

A Feoffment upon Condition, that if the Feoffor or his Heirs pay to the Feoffee, his heirs, or Executors, 10 l. before such a day &c. and both die, and the Heir of the Feoffor doth pay the money to the Executors of the Feoffee, this is good, and he shall enter upon the heir of the Feoffee, but *quere* if there be acquitances without payment in fact if the Heir shall be put out, H. 12. E. 3. Condition 8. T. 13 E. 3. Condition 10.

3. M. Dyer 14. a. M. 24. Eliz. cur. wardor. A Feoffment upon condition that the Feoffee pay to Feoffor his heirs or assigns 20 l. before such a day, the Feoffee may pay the money to the Feoffee his heirs

to the heir or executors, but if the Feoffment was upon condition that the Feoffor pay to the Feoffee his heirs and executors 20 l. such a day, and the Feoffee dieth before the day, the money must be paid to the Heir, and not to the Executors, because they are not assignes of the estate.

But see where the Condition is, that the Feoffor or his Heirs, shall pay to the Feoffee or his heirs, it seems the payment is good to the Heir, or to the Executor, but none of them shall have an action for it, and the Deed of Feoffment doth belong to the Heir, and not to the Executors, 12 E. 3. Condition 9. But Littleton conceives that in this Case the payment ought to be made to the Heir, and if he be not named, then to the Executors, and not to him, *Lit Chapter Conditions.*

The disseisor doth release to the disseisee, upon condition, that if he pay &c. that it shall be void, the disseisor makes a Feoffment, the disseisee tenders the money at the day and place, and after he pays it to the Feoffee in Court, the same is good, 17 Aff. 2. Condition 14. And it was holden in such case, that the payment to the disseisor, or to the first Lessee or feoffee was good, and that he should put out the last purchaser, 31 E. 3. Monfrance des faits 14. P. 10 E. 3. acc.

A Deed



A Deed was delivered upon condition to pay &c. to a stranger, and in detinue upon Garnishment against him, it was returned that he was dead without Heir or Executor, but that the Ordinary had sequestered who was warned & by Attorney appeared, to whom the moneys were delivered, but he put in sureties to render them to the Court, if &c. For the Court doubted if the Bishop or the other to distribute should have them or the King, *M. 48 E. 3. Garnishment 31.*

*Vi. C. Lit. 206.  
and there A. 28  
Elix. in Com. B.  
Watkins and  
Astwells case,  
adjudge if the  
Mortgagor die  
eth, his heir  
within age, the  
Guardian in  
the name of the  
heir may tender  
the money at the day, in respect of the interest which hee hath in the Land after the condition  
performed. So if the heir be an Idiot, any man may tender the money at the day in respect of his absolute  
Inhability.*

And note upon such a Condition of payment by the Feoffor himself, if a day be appointed, payment by the heir or Executor is good, and if the Feoffee upon Condition of his part make an alienation, the alienee may pay the money, *Lit. Chap. Conditions*, and therefore an annuity granted by an Abbot, untill he shall promote the grantor to a Benefice, and no day is appointed, the successor shall not tender him the Benefice, if the Predecessor did not do it, *15 H. 7. 3.* and if a Lease be made, Proviso that if the Lessor will occupy the Land, that the Lessee shall suffer him; if the Lessor die the successor shall not occupy the Land, *27 H. 8. 18.*

### VIII. How a double condition, as one on the part of the Feoffor, another on the part of the Feoffee shall be performed, and when one or both shall be performed.

**C**ondition if the Feoffor pay 4 l. &c. that it shall be lawfull for him to re-enter, and if he do not pay it, and the feoffee pay him 4 l. that Law shall keep the Land in Fee, or otherwise that the Feoffor shall reenter, now if none of them pay the money at the day, the Feoffor may reenter by the last words, *12 E. 3. conditions 8.* but if they were left out &c. the Feoffee should hold the Land, *12 Ass. 5. Condition 13.*

And when the condition is, that if the Feoffor pay &c. and if he doth not pay, if the feoffee do not pay to him, &c. and the one or the other doth not pay at the day, the Feoffor shall enter, *13 E. 3. Conditions 10.*

A Deed was bailed upon condition, that if T. did not pay certain money &c. and if the Plaintiff do deliver a certain sum to one A. that the Deed should be delivered to the plaintiff, and the plaintiff declared that T. did not pay, and also that he himself did deliver the money to A. &c. *48 E. 3. Garn. 31.*

**I X.** Where the Release of a Right shall be upon condition, and where a Release or a Feoffment absolute shall be defeated by a Defeasance after made.

**I T** is holden that a Release of a Right which goes by way of Extinguishment cannot be upon condition 21 H. 7. 30.

A Release to him who is seised, may be defeated by a defeasance upon condition, as a Feoffment, Obligation, Recognisance, by *Shard*, 17 Aff. 2. 31 Aff. 32. there the Defeasance was made after the Release, and it was held by the Court, that such a Defeasance after the Release, if it be not awarded to be made at the same time, cannot defeat the Release, otherwise if it be made at the same time, *vide* 34. Aff. 44.

**Herm.** Justice held that a Release shall never be defeated by a condition which is not comprised in the same Deed, H. 4 E. 2. Release 50. but see 31 E. 3. Release 41. that it shall as well be defeated by an Indenture being delivered at the same time, as by a condition comprised within the same Deed. See *Perkins* 138. And he saith, that where the Defeasance is by another Deed after, and the father perform the condition, that he to whom the Release was made shall be said seised to his use, *quare*, and he held it all one of a Release which goes by way of Extinguishment, as of that which goes by way of enlargement of the estate, or of Feoffment, 139.

A Warranty may be defeated by Defeasance after made, 43 E. 3. 44.

A Rent was delivered into the hand of another to be delivered to the Plaintiff upon certain conditions performed, and afterwards by deed it was agreed betwixt the parties that upon certain other conditions to be performed by the Tenant that the Release should be void, and it was conceived that the Release was well avoided thereby, 32 Aff. 11. And note that a Release was upon a *vis* before made, and so did inure by way of enlargement of the estate.

*Vide Plo. com.*

156. 43 Aff. 1.

17 Aff. 2. 21 H.

7. 23. & 30.

*Br. conditions*

103. that a re-

lease may be de-

feased upon

a condition.

*Vide* 7. H. 4. A

difference be-

tween things

executed and

executory things

executed by re-

lease cannot be

disseised,

contr. of things

executory. See

Lit. Chapt. Re-

leases; that a

Right extin-

guished by Re-

lease must be

reared by a con-

dition, as the

best Release of

the Disseisee to

the Disseisor.

**X.** Where a Condition Limit &c. shall be performed at another place and day, and where at the same day and place, and how &c.

**A** condition of a Release if he pay to B. at such a day, he tenders there the money the same day, the other comes not, wherefore he tenders at another day and place &c. and the Release avoided, *vid.* tender elsewhere is not good, but payment is, 17 Aff. 2. and see there; that a condition to build a house at such a place, shall not be tendred at another place, because it is not possible to be performed elsewhere &c.

A Con-



A condition to serve the Obligee in armes, in such a place by such a time, the obligor said, that he served him at *D.* it is no plea that he did not serve him there, but that he did not serve him generally, 10 *H. 6. 14. Debt. 34.* And though agreement be of payment at another place, yet the obligee needeth not to receive it, 41 *E. 3. 15.* So of a defeasance of a Statute, *H. 46. E. 3. Audita querela;* And 12 *R. 2. Barr 243.*

Aman makes a feoffment upon condition of his part, and dyes before the day, his heir being within age, the day passeth, and afterwards the feoffee grants the heir a longer day of payment, and tenders, the feoffor refuseth, the heir enters, and his entry adjudged lawfull, 31 *Aff. 17. Conditions 15.* Note, that in that case, the wife of the feoffee shall be endowed, if it were against a man of full age, notwithstanding such agreement after, 42 *E. 3. 1. Perkins 76.* But in the first case of payment, if the defendant plead generally payment of ten pounds, which is the lesse sum, and no payment nor tender at the day appointed, the same will not serve, but the plaintiff shall recover, and the ten pounds shall be received out of the penalty, 47 *E. 3. 13. Barr 218.* So where he hath an acquittance of parcel of a greater sum, &c. 6 *E. 3. 8. Debt 155.*

A Condition to be performed by a stranger, cannot be at another place, 36 *H. 6. 12. Barr 74.*

Where the condition is to stand to an award, &c. who award payment by such a day, now before the day it is in the election of the Defendant to pay the money, 36 *H. 6. Debt 196.*

Where the condition was, that he should enfeof the Obligee, *Citra festum*, issue was taken if he were at the place the evening, &c. 21 *Edw. 4. 43.*

So if a Condition be performed, *Citra, circa, or infra festum*, shall be in the Eve, at least, 21 *E. 4. 62.* But where a day or a time is appointed, performance thereof before the day is holden good, by *Fineux*, 9 *H. 7. 17. and 20.*

A condition to enfeof the Obligee such a day, the Defendant said he was ready, and the other came not, and it was holden that the issue shall not be upon the coming of the plaintiff, but if the Defendant were ready, &c. *P. 32 E. 3. Barr 262.*

*C. Lit. 301. 30.  
H. 6. 30. 40 af.  
11. Plow. Com.  
71. 72. 15 E.  
43. Dyer 319*

See of such condition, 40 *E. 3. 12.* and 22 *E. 4.* Where it is said, that if the one nor the other doth not come, the Obligation is forfeited, but *Brian* held the contrary, 22 *E. 4. 43.* but if a condition be to enter for not payment, the estate shall not be forfeited without a demand, 20 *H. 6. Entre Congeable 6.*

Lease is made rendring rent, and a re-entry for not payment at the day or within a moneth, it sufficeth for the Lessee to be ready at the last instant of the last day. So of an Obligation upon condition, 6 *H. 7. 9. Entre congeable*, 22. agrees, where it is to be performed by the Plaintiff himself, *Perkins 150. 22 E. 4. 43. 21 E. 4. 62. and 7 E. 4. 3.* It seems certain issue, that the Defendant was at the place all the day, and the other issue of the last

last instance is doubtfull, but if at any time of the day or of the evening, the Obligor tender to the plaintiff being present, the mony, the forfeiture is saved, 7 E.4.4. vi. Perkins 166. agrees upon a Lease upon condition to be payd within a moneth, tender upon the land within the month, shall save the forfeiture, because he is bound to receive it. But *Paston* said That where the condition is to pay, &c. before such a day, or at such a day; if he tender in the first case before such a day, or in the last case before the last instant of the day, yet upon demand after, he ought to perform the condition, otherwise the Lessor may well enter, the same reason, if he were bound, he ought to be ready at the place at the last instant of the day, notwithstanding the tender before, 4 H.6.9. 19 H.6. 76. 19 E.4.1. But if he be ready at the last instant, and the Obligee or Feoffee cometh not, all is saved without more adoe, 6 H.7.2. So it seems if an obligation be to pay a lesser sum of mony in gross before such a day, and no place is appointed, that tender at any place before saves the Obligation.

Vi. c. 5 part  
114. in Wades  
case.  
Vi. 22 H.6 29.  
C.9. part 79. 7  
H.4. 18. 5.  
Ma: Dyer. 150.  
19 H.9. 12.  
16 H.7. 13.  
19 E.4.4 b. acc.

See according to the opinion of *Paston*, That he who is bounden to shew his Evidences to the councell of the other, before such a day upon request, and he tenders them upon request, and the other refuseth, yet he ought to perform it upon any one request, 19 E.4.1.

A Condition to be performed, *In Festo Pentecostes*, shall be performed the first day. 21 E.4. 62.

XI. How a Condition shall be performed when no day nor place is appointed, and when it shall be performed.

A Release upon condition of payment on the part of the Releasor, if no place be appointed, he may tender the mony upon the land, &c. or unto the person himself, &c. 17 Assise 2. but *Littleton* saith, it shall be only to the person.

8 E.4.4. 21 H  
7.74. in Kelle-  
way,  
C. Lit. 210. C.8  
part, in Barnes  
case.

See 11 H.4.61. By *Skene*, 19 H.6.50. By *Fortescue*, That the tender shall be upon the land mortgaged.

And note, That upon a Lease of Land rendring rent, that it shall be tendered upon the land, also if he said at in the end of the deed, *Ad quas conventiones per implend. obligo me*, &c. But if the Lessee be bounden in an obligation to pay the rent, he must find out the Lessor at his perill, 21 E.5.51. 22 H.16. acc.

Lit. 78. acc.

But see where *B.* was bound to *C.* that *D.* should pay his rent, there it is sufficient that he be ready upon the Land, by *Littleton*, 8 Edw. 4.

A man makes a feoffment in fee upon condition, that he should give back the land to him and his wife, in speciall taile, the remainder unto the heirs of the husband who dyed, and the wife tooke another husband,



how the feoffee ought to enfeof the second husband and the wife, for the life of the wife, the remainder to the heirs of the first husband, 2 H. 4. conditions 5. 12 H. 4. 3. and if that all but one dye, where there were many remainders, yet he must perform to him, and there is no difference, if it be to be performed to the feoffor or a stranger.

But if a day be appointed, and he who ought to take the Estate is dead at the day, the feoffee shall hold the lands for ever, 19 H. 6. 76. But *Quere*, for afterwards it is said, That if a feoffment be upon condition that the feoffee shall go to *Rome*, and he dye before the day appointed, that yet his heir shall not hold the land, 19 H. 6. 77. But if the day of the feoffment be appointed and none is there to take the estate, in the first case the feoffee shall hold the land for ever, *vi. Per'ins* 155. but if no day be appointed, if he who ought to be enfeofed refuseth, yet it shall be performed to his heirs, 19 H. 6. 77.

A feoffment to re-infeof the feoffor, the same shall be upon request, but if it be to enfeof a stranger; it shall be in convenient time without request, but a feoffment upon condition, that the feoffee shall pay, &c. he shall have liberty during his life, but upon an obligation to enfeof a stranger, or to pay to a stranger, he shall have liberty during his life, *Perkins* 154. 155. But upon an obligation to pay a lesser sum to the Obligee himself, and no day is appointed, it is payable presently, 9 H. 7. 17. 44 *Edw.* 3. 8.

He who is bounden to go to *Rome*, hath liberty all his life time by *Passon*, but if the Condition be to go, if the obligee doth enfeof him, he ought to go immediatly after the feoffment, and if it be to enfeof the Obligee, he hath liberty during all his life time, *M.* 33 H. 6. 48. *Barr* 64.

But see *P.* 14 *E.* 3. *Debt* 138. where in debt upon an obligation the Defendant pleaded a Deed of Defeasance, if he did enfeof the plaintiff, and no day appointed, and he durst not demur, but pleaded that he was yet ready, &c.

The Kings Tenant enfeofed a stranger to give the land back to him in taile, the remainder to his right heirs, and this was by licence, and dyed before the re-infeofment, the King seised the body of the heir, and entered for the condition and well, 19 *E.* 3. *Entry congeable* 39. But see before, that the feoffee may perform the Condition to the heir, where no day is appointed.

An Action upon the case against *W.* for that he was retained to purchase the mannor of *D.* of one *7.* for the Plaintiff, and he had purchased the same for himself, yet because the retainer was to purchase of *7.* certain, who was dead before the purchase, the purchase after was holden no deceit, *M.* 16 H. 6. Action upon the case, 44.

A condition to stand to the award of *T.* who awards that the obligor shall pay 20 *l.* and appoints no day, the Defendant did alledge a tender, &c. 12 H. 6. *Debt* 47. and holden that it ought to be performed so soon as he

he had notice of the award, whether it be to make a feoffment, or to pay money, or to be non-suit, but an award that one shall levy a fine, shall not be performed, untill the other hath sued out a Writ of Covenant, 20 E.4.1: and 8.

Delivery of mony, or &c. to deliver over to an estranger, and no day appointed, shall be performed in convenient time, 21 E.4.52.

Where the condition is to renounce his interest, &c. before such a Bishop, and he refuseth, the same is a forfeiture, although he perform it afterwards in reasonable time, for it ought to be performed presently, if it can be, and so refusal is a forfeiture, so a condition to be non-suit, to suffer a *Retraxit*, or to levy a fine &c. upon request, &c. 15 E.4.30. But *Prima facie*, it shall be a good plea, that he renounced before the writ brought, so upon an arbitrement, 20 E.4.8.

But see where the condition was, that if he do prove that the Will of T. was, that the other should enfeoff him, &c. it shall be intended, that the proove shall be before the Justices by verdict, and then be there a day appointed or not, if the Obligee doth not bring his action, so as he may have an inquest, he need not to perform it, and it is sufficient now to say, that it was his will, otherwise it is, if the condition was to prove before, T. for there it shall be intended by Witnesses, &c. 10 E.4.11. 15 E.4.25. and there it is said, that to the condition to prove my wife not guilty &c. it is sufficient to say, that shee is not guilty, and so of others, for the iury shall try it 15 E.4.15.

XII. Where performance after the time is good, and where he ought to be alwaies ready, or longer time given.

**T**He Mortgagors may pay the monys to the Assignee of the Mortgagee after day, but by *Littleton*, it seems that is not needfull for him to do, if he did tender the mony to the party at the day appointed, &c. 17. Conditions 14.



# CONTRACTS BARGAINES, AND BUYINGS.

**I**F a man bargain and sell for money, and doth not say to him and his heirs, yet it is a good sale in fee, by *Shelley*, in 27 H. 8. 5. and of the same opinion was *Andley* Lord Chancellor.

If Tenant in taile in possession, or in use, giveth or selleth Trees, and dyeth, the Vendee or Donee may cut them, and carry them away, by *Fitzherbert* and *Shelley*, 27 H. 8. 5. but by the opinion of *Hauleford*, 11 H. 4. 32. It seems that the Vendee or Donee of Tenant in taile, cannot cut the trees, wherewith agrees *Plowden* 259. in Donee *Hales* case, and so it is, if a man be seised of Land in the right of his wife, and sells the trees, *vi. Perkins* 13. and 18 E 4. 6.

Note, *Per curiam*, 27 H. 8. 25: That a sale or a gift to a feme covert, is good, if the husband agreeth, or doth not disagree, so as the sale is not void but voydable, *vid.* 21 H. 7. 40: by *Read*, *acc.* But *Finew* held the contrary, for he sayd, that a feme covert shall not do a thing which shall turne in prejudice of the husband, but for that which shall be for his advantage, it shall be good, if a man give any thing to the wife, the same is good, by the agreement of the husband, because it may be for his advantage, contrary, If the wife buy a thing in the market, for that may be to the prejudice of the husband, but if shee buy it to the use of the husband, & he agree to it, there it is good, or if it be by his commandement, and he said, that if the wife buyeth bread, or any thing which is spent in the house of the husband, if he hath no knowledge of it, he shall not be charged with the contract. Note, in 19 H. 6. 9: That the buying of an obligation by the wife, in which the husband was bound in 10 l. is void, and so is the contract of an infant, 39 E. 3: but if the wife express the use at the time of the bargain, then the contract of the wife shall binde the husband, 20 H. 6. 22: By *Newton*. Where

Where Contracts are ruled according to the intent of the parties.

**T**wo made a Contract for 18 Barrells of Beere, and after the Beere was spent the vendee would have had the Barrells, and adjudged he could not have them, because the intent shall rule the Contract; So if one promise one to give him a cup of Wine, he shall not have the Cup, 27 H. 8.27. by *Fitzherbert*, but if one promise to give one a Hogshead of Wine, there he shall have the Hogshead, *Plowden Comment.* 86. So as the phrases of Speech declare the intent of the parties: So if I grant to one that he may hunt in my Park and kill a Buck, yet he shall not have the Buck, 18 E.4.14.13 H.7.13. acc. 12 H.7.25.

When in Contracts there ought to be Quid pro Quo & e contra.

**I**N Trespasse upon the Case, the Plaintiff declared that the Defendant took upon him to build a Mill by such a day, and because he did not shew in the Declaration what he should have for his labour, the Declaration was holden to be void, and there by *Rolfe*, if a man take upon him to do such a thing, and it is not expressed what he shall have for his labour, it is a void contract; for there ought to be *Quid pro Quo*, 3 H.6. 36. See 9 H.5.14. a promise to pay 10 l. is not good, without having *Quid pro Quo*.

If a man sell a horse for 10 l. where as he hath no horse, yet Debt lieth; and yet there is not *quid pro quo*. So if a man selleth his Mannor for 10 l. Debt lieth, and yet the Land doth not passe untill Liverie: So if I promise to 1. S. 10 l. for carrying the Corn of 1. D. to such a place, he shall have Debt, yet I had not *quid pro quo*. So a promise made to a Chirurgion to cure 1. S. of such a Disease or Wound, 37 H.6.8.

In an Action of Wast in cutting down and felling of his trees, the Defendant pleaded that the Plaintiff sold him *omnes arbores suas crescentes super &c.* and it was holden, because that it was not shewed for what the Plaintiff sold him the trees, it was but a void contract, and there was not *quid pro quo*, 1 Mary. Dy 91.

If I come to a man to buy a piece of cloath of him, and ask the price of it, and he saith 10 l. I cannot take it away, unlesse I pay the 10 l. for that is implied in the bargain, that he shall presently pay the money for the cloath, otherwise that he shall not have it; but if it be for dayes, there it is a good bargain, because I have given him an expresse liberty to pay it.



14 H.9.19. acc.

it at the day, 21 H.7.6.b. and *Finex* Chief Justice said, that if a man will buy a piece of cloath in London, and demands the price of the Merchant, and he saith 10 l. and the Plaintiff saith he will give so, and takes away the cloath, that it is in the election of the Merchant to make it a bargain or not, for if he will, he may have an action of Debt for the 10 l. or else he may detain the cloath untill he hath received the money for it, and if the other partie taketh away the cloath by reason of the bargain, the seller may have an action of trespassse against him, 21. H.7.160. vide 14 H.8. 19.5 E.4.3. acc.

But if a man doth buy of 7.S. a horse for an ox, there each may take the thing without delivery, but it was otherwise in case of cloath, for there he cannot take it without deliverie, or a day appointed for the payment of the mony, 21 H.6. acc.

A bargain was made that 7.S. should go to such a place and see his corn, and that if he liked of it, and payed 10 l. that he should have the Corn: in an Action of Trespassse brought for taking the Corn, the Defendant pleaded that he went unto the place and liked the Corn, but because he did not shew that he paid the money, it was holden to be no plea, for without payment it was but *nudum pactum*, 17 E.4.1. Plo. Com. 6. & 11.

In 18 E.45. A man seised of Lands in the right of his Wife, for a certain summe of money sold 400 trees upon the Land, afterwards his wife died without issue, so as the husband was not intituled to be Tenant by the curtesie, and the Vendee had not cut down the Trees, yet it was holden that an action of Debt did lie for the Money, because he might have cut the trees in the life of the Wife, but if a day had been appointed when the Trees should be cut down, and the Wife had died before that day, there it was but *nudum pactum*, and the party had no remedy for the money, 28 E.4.21 acc.

If I sell the horse of 7.S. for 10 l. and the owner takes away his horse, yet it is said in 18 E.4. that Debt will lie for the Money, because it was a contract once executed, but note there by *Littleton* 6. that if the horse dieth in the Stable between the Contract and the delivery, that yet the other shall have Debt for the money.

A man doth bargain with 1.S. to teach him such a Trade within three years, for which he was to give him 10 l. and enfeoffed him of the Land, untill the 10 l. was paid. 1.S. died within the three years; it was holden in that case that he should retain his Land untill the Money was paid, 21 E.3. *Contracts* 12. but if the bargain had been to give him 10 l. and he had not paid it, there it had been *nudum pactum*, and he had no remedie for the money.

*Contracts where good although they be conditionall.*

**I**F two agree, that if one of them delivereth twenty cloathes, that then the other will pay him 10 l. the same is a good contract although it is conditionall.

If I sell you my horse for so much mony, as J. S. shall name, the same is good if he name the mony, and if not, it is a void contract, 10 H. 7. 7. 21 H. 6. 6. 17 E. 4. 1. So if I sell you my horse for 10 l. upon condition, that when I come to Pauls, that I shall have my horse again, now when I come to Pauls, I may take back my horse again, by Pollard, 14 H. 8. 21. and see the case before, 17 E. 4. 5. A bargain was made, that J. S. should go to D. and if he liked of his corn there, that he should have it, the same was a good contract upon the condition performed.

So see 18 E. 4. 16. In an action of debt, the Plaintiff declared, that it was agreed betwixt the Plaintiff and the Defendant, that the Plaintiff should deliver to the Defendant, 10 l. for certain bales of woad, if the woad pleased him, and if not, the Defendant was to re-deliver back the 10 l. the Defendant pleaded, that after the bargain, he saw the woad and liked it, and afterwards to the same day he disagreed to the bargain, and there it was holden by all the Justices, that if he once agree to the bargain, his disagreement afterwards is to no purpose, so if he disagree at the first, his agreement afterwards cannot make the contract and bargain good, but there it was holden clearly by them all, that a Contract which was conditionall was a good contract.

*When a Contract determined in part, is determined in all; and where preserved in part, is preserved in all.*

**I**N Debt for 20 l. upon a Contract, the Defendant said, that the Plaintiff took an obligation of 10 l. for parcell of it, and it was holden a good plea to the whole contract, for the Contract being determined in part is determined in all, 3 H. 4. 17. and therewith agree the books of 1 H. 6. 8. and 29 H. 8. Dyer 23. where it is said, that if a man indebted upon contract for money, taketh an Obligation for it, that the contract is utterly gone, so is it upon a judgment given upon a bond, the bond is gone, 23 H. 6. 5. and 6. 29 H. 8. Dyer *ibidem*. So if a man be indebted upon account for arrerages, if he take a bond for the mony, the contract upon the account is gone, yet see the book of a 11 H. 4. 79. contrary, where a man brought an action of account for arrerages found before the auditor, and the defendant pleaded, that the Plaintiff took a bond for the said arrerages;



Arrearages; and yet it was adjudged that the Action did lie, for that the Arrearages being due by matter of Record, the taking of the Obligation did not detain and make void his Action upon the Action, and in that Case it was adjudged for the Plaintiff, *vide Fitz. Bar 185. acc.*

If a man leaseth Lands for years rendring Rent, if the Lessor entereth into part, the whole Rent is gone, but if another entereth by a Title Paramount into part of the Land, yet the whole Rent remains: So if a man sells a thing, which is his own proper goods, and the goods of another man for 10 l. if the other man taketh his goods, yet the Seller shall have an Action of Debt for the whole money because the Contract was one entire Contract, 9 E 4.8.30 H.8.29 24 H 8, 9. acc.

One agreeth to serve a man for a year for 20 s. if the Master doth discharge him before the year ended, to which he agrees, he shall not have any Wages for his Salary; nor Action for it, because it is an entire Contract, and cannot be severed, 16 E.6.23.

If a man sells a Lease of Land and Goods for 20 l. it is one entire contract and cannot be severed, and if one be by defeasible title, yet all shall be issuing out of the other, 7 H.7.4.24 H.8, 9 30 lib.8. 29. but see 12 H.8.11. that if a man leaseth Goods and Lands for a year rendring Rent, and the Land is evicted by a recovery of it, yet the Rent shall be apportioned. *Quod Quare*, for the Law seems to be contrary, and in the time of Queen Mary, the contrary was holden, because the Rent shall be said wholly to issue out of the Land, as *magis dignum*, and *Manwood* vouched a Case in the time of E.6. where lessee for life of a house made a Lease for years of it, with Plate and other household stuffe Rent, and the Lessor for life died within the Term, that the whole Rent was gone, so the Lord Dyer vouched the Case in the time of Queen Mary, that a man leased the Signe of the Greyhound in Fleetstreet, and certain stuffe rendring Rent, the Lessor entred and enfeofed a stranger of the house, the Lessee did re-enter, the Feoffee died, his heir brought Debt for all the arrearages after the death of his father, and holden that the Action was well brought, which proves that there should be no apportionment of the Rent, but that the whole Rent did issue out of the house.

A man was retained to serve for a year for 20 s. the Master died within the year, holden that the servant shall have his Salarie for so much as he had served, because the service is dissolved by the Act of God, *vide* 27 E.3.84. acc. See the book 10 H.23. before contra.

*Where a man may waive the Contract for part, and waive his Law for the rest.*

IN Debt the Plaintiff declared upon a Lease of a Chamber, and bed. and that the defendant was to board with him for a certain time, paying 20 s. by

by the week for the whole: the Defendant as to the Chamber and bed pleaded *non demist*, upon which they were at issue, and it was found for the Plaintiff, and it was moved in arrest of Judgment, that it was a Jeofail, because he did not answer to the boording, and it was holden upon long argument that the Contract being false in part, should be false in all, and therefore the Plea good, *Quod non dimisit percellam*; yet Bryan was strongly against it, and the Justices coming from *Westminster* said, that it was a Jeofail. Bryan said, that the Issue ought to be *Rein luy droit*, and so he might give the speciall matter in evidence, but by *Brook* in abridging of the Case, it stands with reason that the Plea should be good, for otherwise the Plaintiff by a false Declarattion might barr the Defendant from waging of his Law, if the contract were for the boording, and he hath added the Lease of the chamber and bed to it, but it seems to him that for the chamber and bed, he might traverse the Contract, and for the residue, that he might wage his Law, 21 E.4.28.

*What thing shall dissolve and determine a Contract.*

**I**T is agreed betwixt A. and B. that for learning of such a science, that he shall have 10 l. B. dieth before the money payd, the same dissolveth the Contract, *vide* 21 E.3.11. So if a man leaseth Tithes rendring Rent, if a stranger doth recover them, the same doth dissolve the contract, *ibidem*.

If a man seised of Land in the Right of his wife, selleth certain of the Trees growing upon the Land for 10 l. and the wife dieth before the vendee hath cut down the trees, yet the same doth not determine the contract, because it was executed of the other party, and it was the folly of him who bought the trees, that he suffered them to grow so long and stand upon the Land, but if a day had been limited, by which day he should have severed them from the Land, and the wife had died before that day, her death would not have dissolved the contract, 21 E.4.5.

A man agrees to serve one for a year, paying 20 s. at two Termes, *viz.* our Lady day and *Michaelmas*, and afterwards the Master dieth after one of the Feast dayes, his death dissolves the Contract for the time after his death, *vide* 27 E.3 before.

If a man taketh an obligation for Money which was due before upon a contract, the contract is determined if the obligation be made by him who made the first contract, but contrary if it were made by a stranger, 35 E.3 *Debt* 83.29 H.8 Dy. 22.1 H.6.8. by *Babington*, 22 H.6.36 by *C. hock*, 21 H.6.21. *Newton*, 28 H.6.14. 21 H.7.5. by *Butler*, 11 H.4.79 and there it is said, that an Obligation doth not determine another: as accompt before Auditors.



If a man recover in Debt upon a Contract, although he doth not sue for Execution, yet the Contract is not determined, contrary if he had recovered upon an Obligation and *Tales*, not Execution, 9 E.3.5. by *Littleton*.

If one buyeth a thing upon a liking, or misliking, if he once mislike, although that he liketh afterwards, yet the first Act hath detained the Contract, 18 E.4.15. but contrary, if the misliking be to a stranger, as may be taken upon the book: in 44 H.8.

*Sale of a thing not in Esse.*

**I**N 18 H.6. A Parson sold all his Tithes within the Parish, which were or should be there for seven years after, and it was holden a good Sale: So if a Tenant for life selleth all the Profits of his Lands for seven years after, it is good by *Paston* and *Ascne*; and by them; a man may sell to me the profits of his Courts, which shall be for three years following, and the Sale is good, yet they are not in *Esse*; and it is an usuall thing for a man (who hath Corn or Grain) to sell 200 quarters of such Corn or Grain to be delivered at a day after to come: 21 H.9.43.

*Sale of a Bailiff, Servant or Factor.*

**I**F a man hath a known Bailiff, who hath used to sell the beasts or other cattell of his Master, such a Bailiff may sell them; and although he hath not a speciall Warrant so to do, yet it is not materiall. And if he gage the beasts of his Master for Corn which cometh to the Masters use, it is good, and the Master shall not have an Action against him who taketh the cattell or beasts for that cause, as appeareth 27 Aff.5. So it is holden in 2 R.2. and *Old N.B.* 61. & 62. where it is said, that in Debt against the Master the Plaintiff needeth not to shew that the Bailiff had a Warrant to sell the Masters goods.

If the Master commandeth his servant to buy certain goods, or his Factor to buy certain Merchandises, and he buyeth them, the Master shall be chargeable although the goods or Merchandises never come to his hands, 8 E.4.11. But by *Newton*, 20 H.6.22. If a servant buyeth a certain thing without the command of his Master, although it cometh after to his Masters use, yet it shall not charge the Master, but contrary if he do expresse the use at the time of the buying of the thing &c. *Doctor* and *Student* cap.42. for the authority of the Bailiff.

If a Caterer, Surveyor or Clerk of the Market, buying any thing to the use of the King, they are not the Debtors for it, but the King: *vide* 11 H.4.28. *contra* if they have not allowance upon their accompt.

*What thing is sufficient to create a Contract.*

**I**F I sell a horse unto you for 20 l. you shall not have the horse if you do not pay the money, if the horse be not presently delivered unto you, or a day appointed to pay the money, or that you take earnest for it: but if you be telling the money, and another buyeth the horse and gives the money, yet the first man shall have the Bargain; but if he go away for to fetch the money, then it is otherwise, if it be not agreed that he shall fetch the money: 14 H.8.19.

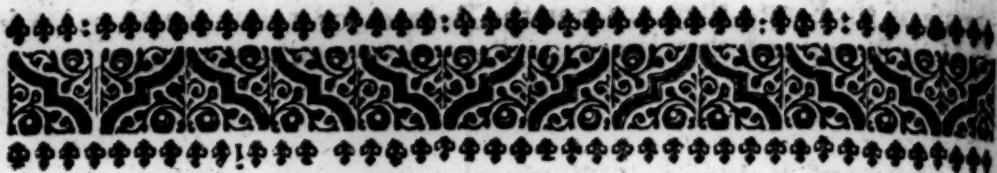
Also if a man selleth stufte for 40 l. and he delivereth the stufte, and no money is paid, nor day given for payment of it, yet it is a good Contract: 9 H.7.21.

If a man promiseth to pay or doth agree to pay 10 l. and it is not shewed for what thing, it is no good Contract, but a meere contrary, & *nudum pactum*: 9 H.5.14 The principall case was, that a man came to me, and said, that if he would relinquish his Execution against J.S. that he would become his Debtor, and upon that there was a Demurrer entered by Cockaire, the same shall not charge him, because it is but *nudum pactum*.

So 15 E.4.32. A man saith, if if you will marry my daughter, I will pay you 20 l. Debt doth not lie upon such a Contract, for it is but *nudum pactum*, *Quare* this case F.B.

Note that where one cannot wage his Law, that he may traverse the Contract: 33 H.6.43. and 39 H.6.22. where in Debt for a Salarie upon a Retainer in Husbandry, the party did traverse the Retainer.





# CORPORATIONS, & CAPACITIES.

I. *What things shall be done in the right of a Corporation without Deed, what not.*

**A** Chantry was founded of three Chaplaines, and one of them justified a distresse as Bayly, and good without a Deed, *Vi. 26 H. 8. 8. See 10 E. 4. contra.*  
Also 4 H. 7. 6. A man cannot do a thing as servant to them, but he must shew a Deed, but as Bayly or Guardian he may, for by their occupation or taking they are chargeable, and note by *Townsend*, they may appoint a Bailly or Receiver without Deed, but *Brian* cheif Justice held the contrary.

But see 7 H. 7. 9 that of small things, as lighting of Candles, making of fires, or the putting of cattell out of their Lands, or the like, they may do without writing, but to vest or devert a freehold, there they ought of necessity to have a Deed proving the assent of the Corporation, see 12 H. 7. 25: & 26: *acc.* there it is said, that if Baylies do any thing to the use of the Corporation, there they need not to shew the first Deed by which they were made Baylies, and see 7 E. 4. 14. *acc.* and there the difference is put betwixt a Bayliff and another servant.

Also he who pleads that the place where the Trespass is supposed, is the Freehold of an Abbot, &c. and justifieth by their commandment, ought to shew a Deed, 18 E. 4. 8. 4 H. 7. 6, and 7 H. 7. 9. and in 12 H. 7. 25: The Dean and Chapter of *Pauls*, brought trespass for cutting down of trees, and the Defendant justified as Bayly to them, and to reaire pale, which he did, and it was good, although it was against the Corporation, being parties.

II. *What*

## II. What things a Corporation may do without Deed, what not.

**I**N 14 H: 8: 29: it is holden that a Corporation cannot do any thing without writing, for if they do present one to a Church, it ought to be by Deed, and yet in pleading it needs not to shew, that it was by deed, for it shall be so intended.

But the Election of Dean, Master, or the like, are made without a Deed, so is it of making an Attorney, because the same appeareth upon Record, and therefore is good, 13 H: 8: 12. And so the usage is at this day to certifie the Maior to the Exchequer without a Deed:

A Corporation cannot retain a Bayly or a Receiver, or another servant without writing, 4 H: 7: 6. by *Brian, Tewnsend contra*. Also by *Yavaour, ibidem*, A Corporation cannot assigne Auditors without Deed, See 16 H: 7: 2. A Case adjudged accordingly, and 12 Edw. 4: 9. and 10.

A Corporation cannot give warrant to one to do a Trespasse, 4 H: 7: 13. but it ought to be by Deed.

Corporation cannot be disseisors, by agreement without writing, nor vest nor devert any freehold out of themselves by any meanes without Deed, 7 H: 7: 9: and 12 H: 7: 25. *acc.* for they cannot license one to take any Trees, nor to make Livery, nor give any Interest without Deed.

So 9 Edw. 4: 39. If a Corporation make a Deed, and delivereth it to one to deliver over, It behooveth him to have a Deed, but *Lisleton* holdeth, 18 Edw. 4: 8. That one may enter by the Commandement of a Dean and Chapter, without a Deed, but contrary of a Mayor and Commonalty, *Quod non est lex ut credo*, for there is no difference, but the commandement of the Dean alone, may be good, as in the case of 16 H: 7: 2. where it is holden, that the Commandement, of the Mayor is good, but contrary of the Mayor and Commonalty, but that is, as the capacity of the Corporation is, but there it is holden that where there is a Head of a Corporation, as Mayor, or Abbot that in such case, if they command, it is good without a Deed, but where there is a Corporation without a Head, as Commonalty only, or Confreres only, there they ought to have a Writing of the Commandement, *Quere*: And note, That 12 E: 4: 10. it is holden that the commandement of the Commonalty is good without Deed, so as they may justifie, &c. The same Law, If the Covent in time of vacation of the Abbot command one to cut down trees, *quod nota* for *Lit.* there saith, that:



that that was the opinion of all his fellow Justices, and also of the Justices of the Kings Bench.

III. *What thing the head of a Corporation may do of himself, without the consent of the whole Corporation, what not.*

**N**ote, by *Brudenell*, 14 H.8.3. That a Mayor or Dean may assign Auditors, or make Baylies, and he may take offering, or make a Steward in his own name by himself, and these are good during his life, and so by him he may make an acquittance in his own name, See 2 R.3.7 That the sum of an 100 l. was due to the Mayor and Commonalty of *Southampton*, by and out of the great Curtaines, and it was holden by all the Justices, That if the Mayor alone maketh an acquittance that it is not good, but yet after in that case, because it was shewed that a hundred such Acquittances had been allowed, the Justices at last did allow of it.

In 21 E.4.76. It is holden, That where there is a Warden and Chaplain, Mayor and Commonalty, Dean and Chapter, the Warden, Mayor, and Dean alone, cannot make a Lease alone, nor a discontinuance, for no Writ lyeth thereupon; but they ought to be by the whole Corporation, and by Deed, otherwise it is void, so if any of them make a release in their own names only, it is void; but contrary it is of such possessions which they have in severalty, but an Abbot may make a Lease or a Release in his own name, and it is good, and so may a Bishop, by the opinion of divers,

In L.5:E.4.70. In Debt against a Provost and Schollars, the Plaintiff declared of contract of the Predecessor of the Provost, &c. and some of the Justices held, that it could not be the contract of the Provost and Schollars, but of the Provost alone: So of an Abbot and Covent, Dean and Chapter, Husband and Wife, it is the contract of the Abbot alone, and so of the Dean and Husband; and some of the Justices held, that the Contract made on the Mannor, &c. was meerly void, but it was conceived that the marriage of the Schollars was but surplage.

In Debt, The Obligation was, *Noverint me, I. Abbatem, de E. &c. In cujus rei testimonium, &c. Sigillo conventus apposui*, the same shall not bind the Successor, because the Successor is not named in the Deed, and the Deed was not *Ex assensu conventus*, for it was granted, that a Deed made by an Abbot, *Sciatis me ex assensu conventus concessisse*, is good; But such a grant by a Dean is not good without the Chapter, for they are parcell of the Corporation, and seised with the Dean, may implead or be impleaded, so is it of a Mayor and Commonalty, and here it is said, that Neither the Deed of the Covent is a good plea, for if the Plea be for the Deed of the Abbot and Covent, it is double, but *Quere*, for I conceive, That

That if the Abbot make it in the name of the Covent, and seal it with the Covent Seal, although it be made by him alone, yet the deed is good and shall bind, *vi. 14 H. 6. 16.*

I V. *How many sorts of Corporations there are.*

SOME Corporations are made by the King only, *14 H. 8. 2.* as Dean and Chapter, Mayor and Commonalty; some by the Pope alone, as the Fryers *Mendicant*, and these have not capacity to purchase, some Corporations by them both, as Abbot and Covent, who are religious, *vi. 46. 3. 27.* *Cessavit* brought against the Fryers Carmelites, *14 H. 8. 2.* by *Fineux*, There is also a Corporation which is by the Common Law, as the Parliament, which doth consist of the King, the Lords, and Commons; But note, That that Corporation which is made by the King and the Pope, have not capacity to purchase but to the use of their house, but a Corporation which is made by the King alone, may purchase to them and their heirs, as well as to the use of the Corporation, and note that it is there sayd, that a Corporation is an Aggregation, or gathering together of the head and body, and not of the Head alone, or of the body alone, but of both of them together.

Also there is another Corporation at the Common Law, by *Danby*, *7 E. 4. 12.* and that is, when Lands are given to a Parson and his Successors, *vi. 40 E. 3. 7. acc.* The like where Lands are given to a Vicar and his Successors, and there is a Corporation also by prescription, *Ibidem*; and see *Plowdens Commentar. 242.* That the King is a Corporation at the Common Law:

V. *Corporations without a Head.*

NOTE. It is holden by *Thorpe*, *22 Aff. 67.* That a Corporation may be made of the Comminalty without a Head, Mayor, or Bayliff, or any other Head, and that is affirmed by the whole Court, *16 H. 7. 2:* for there it is said, that when one justifieth by the Commandement of a Corporation which hath a Head, as Mayor, or Abbot, there he needeth not to shew a Deed, but where one justifieth by the commandement of a Corporation which hath not a Head, as by the Commandement of the Comminalty, or Bretheren, &c: or the like without a Head, that of necessity he ought to shew forth a Deed, so when any thing is given to Parishoners, which is a personall thing.

And note, that when the number of the Brethren and Sisters appeare in the foundation of a Corporation made by the King and Pope, that the certainty



Certainty of them must bee set forth in Pleading, 34 H. 6. 27.

V I. *In what Corporations the Head alone shall make Contracts, and what shall bring actions alone.*

**N**Ote that the Provost of a Colledge, or Abbot, Dean, these alone shall make the Contract, and the Contract shall not be made by the whole Corporation, as it appeareth by the book of *L. 5. E. 4. 70. Br. Corporations 53.*

And for bringing of Actions the Dean and Chapter use to do it in both their names, and not to bring them in the name of the Dean alone, but of an Abbot or Prior it is otherwise, 12 E. 4. 9. & 10.

V II. *Where one shall be named by his Right name of Corporation in actions brought against him, & e contra.*

**I**N 9 E 4. 20. If Trespasse be brought against an Abbot, it is sufficient if it be brought against him by the name he is known by, but if an Action be brought against him, in which the Freehold is demanded, he ought to be named by the right name of his Corporation, by *Newin*, 20 H. 6. 27. 21 H. 6. 45. 16 H. 7. 1. in Trespasse, *vide* 13 H. 7. 14 *contra*.

In Debt against a Corporation they ought to be named by the right name of the Corporation, so every grant ought to be by the right name of the Corporation, otherwise the grant is void, 35 H. 6. 5.

*Scire facias* upon a recovery had against the Prior of Saint *Johns of Jerusalem* in England, where the Record was *Prior Hospitii Sancti Johannis de Jerusalem* in England, and because he was known as well by the one name as the other, it was holden good, 44 E. 3. 16.

A *Pracipe quod reddat versus Magistrum sive Custodem, & Presbyteros Collegii de H.* and it was holden good in the disjunctive, because the foundation was so, 19 H. 6. 13. and so 21 E. 4. 56. if a grant be made to them, and it be not according to their right name, it is void.

In Trespasse it is holden, that if the Defendant pleadeth *Misnomer*, it is no plea to say, that the Party is known by the one name or the other, contrary if the plaintiff plead *Misnomer*, 1 E. 4. 6. 4 E. 4. 7. 25 H. 8. 16. *Butt Book* seems to agree to the difference in a real and in a personal Action, See 20 H. 6. 1.

V III. *Where*

VIII Where the Head of a Corporation shall be named by his name of Baptisme.

**A** Nnuity was granted by a Corporation by name of the Provost of the Colledge of E. and the action was brought by the same name without naming of his name of Baptisme, and yet good; but in his Declaration he ought to set forth his name of Baptisme. So if an Abbot with the Assent of his Covent be bound in an Obligation without naming the name of Baptisme, it is good; and in a Writ brought against the Successor, he did set forth his name of Baptisme in the Declaration, and by *Thirning*, in a Writ of entry upon a Disseisin made to his Predecessor, the name ought to be in the Writ, 12 H. 4. 9.

If a Dean and Chapter make a Lease, *Sciatis nos Decanum & Capitulum dimisisse, &c.* and doth not set forth the proper name of the Dean, the Lease is void, by *Littleton*, which the Court agreed, 18 Edw. 4. 8. *Quare*, for all is error, as *Brooke* conceives, *Corporation* 73. See 14 H. 8. 39.

A grant was made to J. Abbot of D. where his name was W. Abbot, &c. and yet the grant was good, *Vi.* 17 E. 3. so *Grants* 67. and *vi.* 14 H. 8. That the Mayor and Commonalty without naming the proper name of the Mayor, may make a feoffment, and by the same reason may make a Lease.

IX. When Surplisage in the Name of a Corporation is a fault, where not.

**D** Ebt was brought against *Magistrum & confratres sive socios suos*, where the Corporation was only Master and Bretheren, yet the Writ was good, and so is a grant made by such name, for that is the name of the Corporation and more, and the Surplisage is void, by *Chock*, 20 Edw. 4. 12. But see 35 Hen. 6. 5. where a grant was made of Rent, *Extra Ecclesiam sancti Pauli & Petri*, where the foundation was by the name of Saint Peter only, and therefore the whole grant was adjudged void, *vi. Br. Misnomer* 9. acc.

Q q

X. Where



X. Where an Obligation made to a Corporation shall go in succession, where not.

**D**Ebt was brought by R. Alderman of the Guild *Beata Maria* in Boston, against L. upon an Obligation made to J. S. Naper Alderman, and it was to him and his Successors, and by the better opinion of the book, it shall go to the Executors of J. S. and not to his Successors, *Vide* 32 H. 8. Dyer 48. So by Brian, An Obligation made to the Church Wardens and their Successors, is void as to their Successors, and shall go to their Executors: So by Littleton, Obligation made to a Dean and his Successors, is void as to his Successors, contrary if it be made to the Dean and Chapter and their Successors: But by Chock, an Obligation made to an Abbot and his Successors, without speaking of the Covent, is good to his Successors, because none other of the Corporation is of ability to take but himself. An Obligation made to the President of Saint Johns Colledge in Cambridge, and to the Schollars thereof, shall go in succession, but contrary if it be made to the President without naming the Schollars, 7 Eliz. adjudged.

It is said by Chock Justice, That if a Chantry be founded by the name of Chantry Priest, and successors, and lands are given to him according to that name, that the grant is good, but an Obligation made to him and his Successors, is void as to his Successors, 20 Ed. 4. 2. 1

An Obligation was made to J. S. Chamberlain of London, and his Successors, it was holden in the Kings Bench, P. 21 Eliz. That his Successors should have it.

A Lease was made to a Chantry Priest, and his Executors, and a release was made to him and his Successors, It was holden in the Common Pleas, 21 Eliz. in *Wakes* case, that he should have but an Estate for his own life, for it shall dure according to the first Lease, and that was not to him and his Successors, but to him and his Executors.

Note, That it is admitted, *M. 7 E. 3. 11. Fitzh. Issue 7.* That where a Bishop having made a Lease for years of Land which he had in the right of his Bishoprick, and then made a Lease for life, that he had the Reversion in the right of his Bishoprick, and not in his own right.

XI. Where one shall be of a corporation in one degree, and not in another Degree.

**I**N Assise against Mayor and Commonalty, they appeared by one of the Commonalty as their Attorney, and the opinion was, that it was good, for one of the Commonalty may enfeof the Mayor and Commonalty, 3 H. 6. 43.

Assise

Affise of Nufans was brought against the Dean and Chapter of *E.* and *J.W.* who was one of the Chapter, and yet good, for as he is *J.W.* he shall pay damages of his own goods, 46 *E.* 3. 23.

Trespass for taking of Toll, was brought against the Maior and Commonalty of *P.* and *J.S.* it was pleaded to the Writ that *J.S.* was one of the Commonalty, and yet the Writ was adjudged good, and that is in diverse respects, for if the Mayor and Commonalty do disseise me, and I do release to twenty of the Commonalty by their proper names, it is not available to the Maior and Commonalty, and by *Paston*, if the Mayor and Commonalty disseise one of the Commonalty, he shall have an Affise against them, for they are as severall bodies, viz. a body politicke and a body naturall, 8 *H.* 6. 1. and 14.

If a Citizen be disseised, and the Mayor and Commonalty release to the Disseisor all their right, it shall not bind the disseisee, so if the Mayor and Commonalty are disseised, and every one of them will release by their proper names, it is nothing worth, 19 *H.* 6. 64. by *Martin*, in the Rector of *Edingtons* case.

If an Abbot and all his Monks by their proper names, and not by the name of their corporation, make an Obligation under their Covent seal, it shall not bind the Successor, because the Covent is not named by the name of the Covent, the same Law of Mayor and Commonalty, 15 *Edw.* 4. 1.

The Master and his Confreeres cannot present the Master to a benefice, for he is the Head and cannot present himself, so they cannot enfeof the Master and make a Letter of Attorney to make Livery and Seisin to him, but the Master and his confreeres may give to one of his Confreeres, or the Dean and Chapter may give to one of the Chapters, for there is a perfect corporation without him that takes, For *Major pars tota est.*

Also it is there holden, That one may give Land to *J.S.* Dean and his Successors, and to *J.S.* clark and his heirs, and he shall be Tenant in common with himself: so of a Rent, so where he hath a Signiory, as Dean, and he purchaseth the Tenancy, as *I.S.* he shall hold of himself 14 *H.* 8. 2. and 29.

An Obligation made by the Mayor and Commonalty, to the Mayor, is worth nothing, 21 *Edw.* 4. by *Vausour*, *Bract Corporations* 63.

*I.S.* Master of the Fraternity of *B.* and his Confreeres, granted, *Quendam annualem redditum* to *B.* solvend. &c. in cuius rei testimonium predict. *Iohannes*: Master and his five Confreeres to this deed, have put the common seal, et etiam predict. *I.S.* Sigillum suum apposuit, and it was holden, because there were no words in the premisses of the Deed to bind him, that he should not be bound as a private person, 10 *H.* 7. 16. 14 *H.* 17.



## XII. Where change of a corporation shall not alter the charge.

**I**T was agreed, That where a Corporation is by name of Commonalty and after it is changed into Bailiffs by another grant, yet by this change they shall not be discharged of Covenants or annuity, &c. to which they were bounden before, and by the same reason they shall retain and keep the Lands and Possessions which they had before, 2 H.6.9. And for proof thereof, note, it is holden in 14 H.6.12. that where there are bailiffs of a town who have liberties by the grant of the King, and afterward the King by another Charter make them Sheriff, yet their franchises and liberties remain, 39 H.6.13. and 14.

But although the charge did remain, yet it is to be considered how it shall be demanded, whether by the ancient name or by the new name, for which see 39 H.6.13. and 14.

If a man doth recover against a Vicar an annuity, and before Execution be had of the Recovery, the Vicaridge is united to the Parsonage, yet the Plaintiff shall have execution against the Parson as Parson, and where Bailiffs are made Mayor and Commonalty, yet my action shall be against them by the name of the new Corporation, 20 E.4.6: and the Writ shall not contain the speciall matter, but he may help himself by the Declaration.

So if Trespass be brought against an Abbot where he was called Prior at the first foundation, yet the Writ is good, and note the Defendant did plead in bar a scoffment made to a Prior of the same place, and that afterwards he was translated into an Abby, and that the said Abbot and his Successors had been seised afterwards, and he was forced to shew by what authority he was made Abbot, for which he pleaded at large, that the Pope gave authority to the Bishop of S. to make it an Abby, 7 Edw. 4. 32.

And note, that when a Corporation is to demand an annuity or other thing as by a new name where he had another name before, the manner is to shew the prescription in the other Corporation, and then to set forth that in such a time of such a King, the Corporation was changed, and in the name of the Corporation, and that he who was then the Head of the Corporation and his Successors after that have been seised of the thing in demand, and that appeareth by 22 E.4.44: 7 E.4.32: 39 H.6.13. and 14 H.6.18. and 19.

## XIII. Where no ability shall be adjudged in a Corporation.

**N**Onage in the Mayor is no plea, by *Sulliard*, 21 E. 4. 7. so *Duresse*, or *Manasse* or *Non sana memoria*, is no plea by *Towsend*.

A Corporation cannot be beaten in their Politick body, but in their naturall body, so a corporation cannot beat others, nor commit Treason or Felony as a Corporation, and a corporation shall not be imprisoned for denying their Deed, nor for a disseisin done with force, nor shall be forjudged the Realm, by *Pigot*: Outlawry, or encouragement is no plea against them, nor in the Mayor, by *Nele*; *Capias* in debt doth not lye against a Corporation, for they cannot be imprisoned; by *Choke*, Villainage in the Mayor is no plea, by *Sulliard*, but for imprisonment of the Mayor the case was this, An Abbot brought an action of Debt against the Mayor and Commonalty of *Norwich*, upon an Obligation, the Defendant pleaded, that the Plaintiff did imprison the Mayor in the *Fleet*, untill he and the Commonalty made the Obligation by duresse: And *Brian* Justice held the plea to be a good plea, because the imprisonment of the Head is the imprisonment of the whole body, and it was in a case which did concern his Office, for if the case be, that such a Corporation should chuse the Mayor such a day, *Sub pena* of 20 l. and the Mayor is then imprisoned, for which cause they loose the 20 l. the Corporation shall have false imprisonment, so is it if the Corporation be bound to render an account in the *Exchequer* such a day, at which day the Mayor is imprisoned. But *Sulliard* held, that for the imprisonment of the Mayor, the Corporation should not have a Writ of false imprisonment: But it was agreed, That if it had been pleaded that so many men made the Corporation, and that such and such of them were imprisoned, then it had been a good plea, 21 E. 4. 17.

## XIV. What Corporation cannot do a Trespasse, &amp;c contra.

**A** Man shall have Trespasse against the Mayor and Commonalty, but not against an Abbot or Covent, 15 E. 4. 1. *Per curiam*, vi. 32 H. 6. 8. contrary of a Parson,

Trespasse doth not lie against the Prior of Saint *Johns* of *Jerusalem* in his Corporate capacity, but against him by his name of Baptisme it will lie, 39 E. 3. 13.

But see *Thorp* 22 Aff. 67. That Trespasse doth not lie against Commonalty, but against the persons which do the Trespasse by their proper names.



So it is holden, 21 E. 4. 17. by *Pigot*, that a corporation cannot make a Battery or commit Felony, or Treason, and so see a corporation cannot make a Disseisin, if not that one enter to their use by a writing under their covent and common Seal, 14 H. 8.

A Bishop having a term for years made a Lease for life, it was holden that he had the rendition in the right of his Church by wrong, 7 E. 3. 11. Issue 7. vide 50 E. 3. contrary.

XV. *What words in the Kings grant shall be good and sufficient to make a Corporation.*

**T**He King giveth Land in Fee-Farm *probis hominibus villa de B.* the same is a good corporation: the same Law where it is given *Burgibus, Civibus & Communitati*, and they by such name may have an Action of such things which do concern their Farm, and the Writ shall be ad *respondend. probis hominibus &c.* 7 E. 4. 14. vide 1 *Ma. Dyer* 100 ac.

If the King grant *probis hominibus de D. heredibus & successoribus suis*, the Mannor of *D.* rendring Rent, they are incorporated for all things which do concern that Mannor, but if he grant *probis hominibus de D.* that they shall be quit of Toll, it is a void grant if they were not incorporate before, but note that *Bryan* said, that it is a good Corporation to this purpose, but not to purchase, 21 E. 4. 55, 56. vide 1 *Ma. Dyer* ac. But the principall case there was, that *Norwich* was incorporate by the name of citizens and comminalty, and in the same charter the King did afterwards grant *Civibus predict. de Norwich*, that they should not be put on Juries; and afterwards it was enacted by Parliament, that all grants made *Civibus &c.* should be good, See and if the second grant should be void or *not* was the question, for if it were void, then *nihil operatur* by the Act of Parliament, but some were of opinion that the grant should be good *Civibus*, and for that purpose they were a corporation, and every one of them at their pleasure should take benefit of the grant by *Nele* and *Chick* Justices, and by them it was holden, that if the King grant *Inhabitantibus de D.* that they may choose a Mayor, and that then they shall be impleaded by the name of Mayor and comminalty of *D.* now *Inhabitantibus* is gone, and yet they were a good Corporation to take by force of the first grant, and note that in all the ancient Cities and Burroughs in England, as *London &c.* the grant is *Civibus & Burgenfibus de L.* which was not a Corporation before, and yet good, but perhaps the reason hereof is, because these ancient Cities and Burroughs are favoured, vide 21 E. 4. 55, 56. but see *Keble* 3 H. 7. 13. that if the King grant to a Corporation, which is no Corporation; or to an alien born, or to a man outlawed, the grant is void.

Note that the creation of a man a Duke, and the giving of him Lands for

for the maintenance of the Dignity by the same Patent is good: and so it is of creating of a Corporation, and giving of Land to them by the same Patent, 2 E. 6. 84. Br.

If the King grant to a Corporation to purchase or give or grant by the name of Master and Wardens, Brothers and Sisters, and by the same Patent also grants them to plead and be impleaded by the name of Master and Wardens onely, the same is good so to incorporate them, as to purchase to be Bailiffs, and to implead by the name of Mayor, it is good, 11 H. 7. 27. vide Librum.

XV. I. What processe shall be awarded against a Corporation.

Processe of Outlawry doth not lie against a Corporation, as *Capias* & *Exigent*, but Distresse against them, 45 E. 3. 2. & 3. 39 E. 3. 13. acc. against the Prior of Saint Johns of Jerusalem in England, vide 22 Ass. 67. by Thorp, 21 E. 4. 27. and 67.

XVII. Where one corporation may make another corporation, where not.

ONE Corporation cannot make another Corporation by usage or Prescription, but only by specialty, words of the King, so to do by the Kings Grant, and upon such a grant, the Abbot of Westminster, and the Prior of Westminster are severd, for a Corporation cannot be divided, but by grant of the King, and the King may grant Lands to the Queen to hold by her self, or in common with the King, vide 49 Ass. 8. and the same also appeareth in 49 E. 3. 3. & 4. that London cannot make a Corporation nor a Commonalty, nor can be a Corporation by Prescription, for that is onely at the will and pleasure of the King, so they cannot make Laws to bind the inheritance of any man.

XVIII. CAPACITIES.

IF a Monk purchase it is void, 11 H. 4. 26.

If an Abbot purchase to him and his heirs, it is but for life, *contra* of a Bishop, Dean and Chapter, 9 H. 6. 9.

If a Master of an Hospitall dieth, his successor shall have the arrearages, and



and not his Executors, which proves that he cannot as Master make a Will, contrary of a Parson, 19 H.6.44.

A Monk is capable alone of the Grant of the King, where there is a Rent reserved, 14 H.4.10. and a Monk and Channon are capable of spirituall things, as to be made Executors &c. or Vicar &c. 3 H.6.23.

A Priest, a Chaplain was Escheator, *Fitz. N. B. 225 C.*

If an Abbot hath money given unto him to pray for souls, he hath it not in Right of his house, for if he spend the money, it is no cause of Deprivation of him, 9 E.4.34. by *Moyl*,

**XIX.** *Where a gift to Parishioners is good, where not.*

**I**F a Feoffment be made to the use of the Parishioners of C. they are not a Corporation to such a purpose as to take Lands, but contrary of personall things, 12 H.7.27. and that appeareth by the case of 8 E.4.8. Where Trespasse was brought by the Churchwardens for a book taken *ad damnum Parochianorum*, and the Writ did lie, *vide* 37 H.6.10. the case of the Geaile.

If an Obligation be made to the Church-Wardens and their successors, it is void, 20 E.4.2. by *Bryan*. So a Devise of Lands to Parishioners is void, but *contra* of Chattells, 37 H.6.30.

Trespasse was brought by the Church-Wardens against the Parson of the Parish, for the breaking of the Bells which were in their custodies, and it was holden good, 11 H.4.12. So the Church-Wardens shall have an appeal or an accompt of the goods of the Church, 12 H.7.27.

*Vide Plow. Com. 242.* That the King is a Corporation at the common Law, and was purchaser in Succession by the words (heirs).

*Where the Head of a Corporation may gain a Freehold by Disseisin.*

**A** Bishop having a Term for years made a Lease for life, and it was holden that he had the Reversion in the right of his Bishoprick, and not in his own right, 7 E.3.11. *Issue 7.*

If a Bishop doth present to a Church twice, where he ought not to present, and dieth, it seemed in that case, that the Successor had gained the Patronage by the book of 47 E.3.10. for in that case the King claimed it as for Mortmain, *quod nota.*

Where a Bishop disseised one, and afterwards made a Lease for years, according to the Statute of 1 Eliz. It was holden in a Reading, that it

was a good Lease which proves that he had gained the Lands in the right of his Corporate Capacity.

See 44 *Aff. Br. Prescription* 54. the Prior of Case, where a corporation was by Prescription.

And see that the Bailiffs and Commonalty of *Godmanchester* were alledged to be a Corporation by prescription, *2 H. 7. 17.* the Prior of *Huntingtons* Case.



# COSTS.

## I. Where a Bill in the Chancery is adjudged.

**W**Here a Bill in the Chancery is adjudged insufficient upon a Demurrer, and yet there no Costs, for the Statute gave damages upon the suggestion found false, and the verity in that case came not in question, 7 *E. 4. 14.*

Note, that where an action of Debt is grounded upon a penall Law, there the Plaintiff shall not have Costs nor damages, 35 *H. 6. 58.* and by the Statute of 24 *H. 8. cap. 8.* The Plaintiff to the use of the King, although he be non suit, or a Verdict passeth against him, yet he shall not pay Costs, yet by the Statute of 23 *H. 8. cap. 16.* Every other Plaintiff if he sueth not *in forma pauperis*, if he be non suit, or the Verdict passeth against him, Damages and Costs shall be recovered against him, and by the Statute of 8 *Eliz. cap. 2.* if he doth not put in his Declaration within three dayes, or doth not prosecute with effect, he shall pay Costs at the Discretion of the Justices.

Note, no Costs are to be paid, where the Judgement is upon Confession, 33 *H. 6. 13.* by *Prisor.*

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## II. In what Actions Costs shall be and where, and where they shall be trebled as well as damages.

**N**ote, that by the Statute of *Glocester, cap. 1.* It is declared that in all Cases where damages shall be recovered, that in those Cases the

R r

plaintiff



plaintiff shall recover his costs of suit, 37 H.6.10. and damages are to be recovered, where a man bringeth an action against one for his own deed, and recovereth by the said Statute, but that seems to be in such actions where damages are not given by the Statute, and especially in such Actions in which high damages are given by the Statute, as in a *Quare impedit*, there no Costs shall be, because the damages are so high, and that by the opinion of all the Justices, 27 H.6.10. and 9 H.6.32. 27 H.8.2. by *Spilman*, but yet at the Common Law Costs were given in a *Quare impedit*, but that was before the Statute of *West. 2. cap. 5.* The same Law in a *Decies tantum*, 27 H.6.10. but it seems Costs have been given in a Ravishment of Ward, and yet Damages are given by the Statute.

And note, a man shall not recover Costs in Wast, by 2 H.6.60. the reason is, because such great Damages are given by the Statute, and yet in 5 H.7.13. the contrary is holden, that there shall be costs, but the costs shall not be trebble as the damages are, yet *Brook* makes a marvell at it, that any costs should be, and by the whole Court, 2 H.4.17. That where the Statute giveth Damages, that there shall not be any inquiry of other damages: So that the Justices of the Kings Bench conceived that Costs in Wast should be trebled according to the rate of the damages, 5 E.4.7. and not according to the rate of the Wast taxed.

See 19 H.6.32. that in Wast no costs, but in an action of forcible Entry, there the costs shall be trebled, and *Paston* gave the reason to be, because that the Statute of forcible Entry giveth them. And for trebble Costs in a forcible Entry. See 22 H.6.57. yet see 14 H.6.13 that the costs in a forcible Entry were not trebble, but onely the damages.

In 12 E.4.1. In an Assise against two, one was found guilty, as to part with force, and the other guilty as to another part, but not with force, and as to him who was found guilty with force, the costs and damages were trebble, *quod nota.*

Costs may be taxed and assessed by a Forrein Jury, but contrary of damages, 33 H. 6. 55. and note, that costs are alwayes taxed intirely.

COVER-

# COVERTURE AND INFANCY.

*What Acts of an Infant are void, and what voidable.*

**T**HE Grant of Common, Tithes, or other things, which lie meerly in Grant are void, although that a Rent be reserved upon such grant, *vide Perkins 3 acc.*

An infant brought an action of waste against his guardian by Attorney, & the defendant shewed to the court, *viz.* that the Infant was within age, and yet he was compelled to answer over, because the Action lieth as well by him within age, as of full age, but by *Perseus*, if an Infant bring an action against, by Attorney, if the Defendant doth alledge that he is within age, the Attorney shall cause him to be brought into Court to be viewed, and if he be within age the Warrant of the the Attorney shall be disallowed, to which *Paston* agreed, 48 E.3. 10. and by 22 H.6. 31. where an Infant is permitted to make an Attorney, which is recorded there the party cannot plead the same in arrest of judgement, but is put to his Writ of Error.

But it is holden 1 H.5. 6. that an Infant shall not make an Attorney, nor be an Attorney, but that is to be intended, an Attorney to sue in a Court of Record, for he may be Attorney to deliver seisin, 21 E.4. 18.

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*Infant accomptable, & e contra.*

**N**Ote clearly by *Newton*, that an account doth not lie against an Infant, 19 H.6. 5.

Accompt doth not lie against an Infant of a receipt during his nonage, 21 E.3. 7, & 8.

But if an Infant enter into an accompt before Auditors, he shall be charged



charged in debt upon the arrearages of the account, by *Newton*, 10 H.6. 14: but that an infant shall not be charged in account neither as Receiver nor otherwise, see 23 E.3. *Fitzh. Infant* 19. and *ibidem* 11. 27 E.3. ad-judge acc.

In 16 E.3. *Account* 52. account was brought against two; one sayd, that at the time of the receipt and yet hee is within age, and hee was forced to hold himself to one of the pleas, wherefore he sayd he was within age at the time of the receipt supposed.

*Where Acts of an Infant are void, where not.*

**I**F an Infant procureth one to be sworn and impannelled, the procurement is voyd, 27 *Ass.* 45.

*P.A. Jac. in B.*

*An infant did acknowledge a Statute and during his nonage, brought an Audita querela, and had judgment: at the full age of the infant, the Comseere-versed the judgment given in the Audita querela, and the infant being within age prayed a new Audita querela, which was denied by the whole Court,*

A Statute Staple, Fine, nor a Deed enrolled, shall not be accepted from an Infant, 32 H. 8. but if he be bound, he shall avoid it at his full age, or within age, by *Audita querela*, F.N.B. 104. and so is 15 E.4. 5. by *Brian*, and 20 E.4. *Audita querela* 27. But *Quere*, for it was holden in the Common Pleas, 20 *Eliz.* that at full age he should not have *Audita querela*.

An Infant shall not wage his Law, although he be an Executor, 11 H.6. 40. and see *Lit.* 57. That an infant shall not be a Juror.

An Infant shall not be bounden in a Recognizance as main-penior, because he hath no means to avoid it, 8 H.6. 30. So of a Statute by 48 E. 3: 33. *Bolknapp*.

An Obligation, Warranty, Defeasance of an Infant are good until they be avoided by plea, contrary of a feme Covert, 48 E.3. 12. 14 H. 4. 30. and 33. 37 H.6. 31:

If an Infant doth assigne more to his mother for her Dower than he ought to do. *Quere*, whether he shall enter into the Surplussage, *Read* held that he should, as in the case of *Pension*, *Kingsmill* contrary, 21 H. 7. 21.

An Infant commanded his Tenants to put in their cattell into his Common, it was holden a good seisin, 45 E.3. 25. because it was to do a lawfull thing which was for his benefit.

An infant commanded one to do a disseisin, who did it, and it was enquired of if the infant was there, and it was holden, that because he was there, that he should be acquitted, 12 *Ass.* 30 *Ass.* 200. 2 *Ass.* *Br.* *Disseisin* 16.

Two infants joyntenants, the one doth release to the other who en-zeeth, it is a disseisin, vi. 7. *Ass.* 10. *Br.* *Disseisin* 19.

C: 2. part 59. If an infant levieth a Fine, and declares the use of it, it shall bind him so long as the Fine remaineth in force

An Infant shall be bounden by a recovery in a *Cessavit*, 31 *Ed.* 3. *Per quia servitia* 8. *Doctor and Student*, 113. acc.

Particion shall bind an infant if it be equall, 21 H.7: 29:

## Coverture and Infancy.

309

*What Statutes shall bind Infants, what not.*

**I**F an infant be Guardian of a Prison and suffereth an escape, he shall be subject to the escape, *Doctor and Student*, and 36 E. 3. and there it is holden, that a Statute which giveth corporall punishment shall not extend to infants, contrary of other Statutes, if they be not excepted.

An Infant of twelve years of age is to be compelled to serve in husbandry, *F.N.B. 190.*

An Infant brought an attaint, and the first verdict, and thereupon the infant was awarded to prison, 30 *Aff. 18. 4 E. 3. 34.* and so note there: that an infant was within a Statute which gave corporall punishment, *vi. 41 E. 3. Imprisonment 17.*

If an infant be found a Disseisor, yet the fine and imprisonment shall be remitted, 43 *As. 45: 26 As. 17. 24 Aff. 14 43 E. 3. imprisonment 16.*

The Stat. of Non-claim shall not bind an Infant, 2 *As. 6. B. Age 32:* but if parcell of the year be in the time of the Ancestor, now if the heir within age doth not enter within that year he shall be barred, by *Dy: Pl: Co. 371.*

If an Infant be convicted of ravishment of Ward, he shall not be imprisoned for the fine to the King, yet the statute of *Merton* is generall, *viz. Quod quicunque laicus, qui inde convictus fuerit. Pl: Co: 364 by Walsb.*

If a woman Infant consent to a Ravisher, yet the next of kindred shall not enter, yet the Statute is generall, *Si dua filia & alia mulieres consenserint*, but the same is to be understood if shee consent before twelve years, for after these years if shee do consent, *Proximus hares intrabit.*

An infant is within the Statute of waste, for waste done by himself, but not for waste done by a stranger, *Plow: Com: 364.*

An infant is within the stat. of *cessavit*, because it is a thing injurious to the Lord, & the Lessor, *Com: 364: & 2: M. Dyer 104.* & see there, that an infant is bound by every Statute Law, if he be not particularly excepted.

The Monsuit of an infant in a *Quare impedit* shall binde him, 5 E. 2: 10 voucher, & 1. & 2. *Mar. Dyer, 104. acc:*

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### *Confession of an Infant.*

**I**N a *quid juris clamat* by an infant, he cannot confess that a lease was made for term of life without impeachment of waste, but shall stay till he come of full age, 43 E. 3: 5: 45 E. 3: 33:

In an *Aff:* it was agreed that where an infant is Plaintiff, nothing shall be said to be confessed by him, but the assise shall be at large, although that he tender a speciall issue, 44 E. 3. 10:

See 48: E. 3: 34: where the difference is taken, were the infant is demandant, and where he is tenant, & there it is said, that no judgment upon a *nihil dicit* shall be against an infant where he is plaintiff, contrary where he is Tenant or Defendant.

If an Infant in an *Aff:* plead, that never lawfully coupled in matrimony, & the



same be certified against him, yet the Assise shall be awarded in point of the Assise, for hee shall not be counted as Disseisor by his plea, but contrary by verdict, &c. 28 Assise 52. 4 E. 3. 31.

In an Assise by a Guardian, the infant came and would have disavowed his suit, and was not suffered, for that should be a *Detrahit*. 33 Assise 3.

An Infant was vouched, and answered to the Action, and it was admitted, and he bound to warranty 13 E. 3. voucher 12. also an infant did confess a plea in a Formedon, which abated the Writ, and admitted, 3 E. 3. Infant, 14. 41 E. 3. 21. contra.

In a *Precipe* against an Infant, he would have confessed the action, but the Court would not suffer him, 9 E. 4. 34.

An Infant who is in by purchase, shall be compelled to attorn in a *Per quæ servitia*, and he shall be bound by his own confession, or not denying: He shall joyne the Mife in a Writ of right, and the Lord shall avow upon him by his tender of the services, 32 E. 3. Age 80.

C. 10 part in *Conpercase*, In a *Per quæ servitia*, against an Infant who hath the Tenancy by discent, he shall not have his age, but he shall be compelled to attorn, because attornment is only to perfect a grant which the law favours.

In a Writ of mesne, the plea shall not stay for the nonage of the Plaintiff, because his Nonage shall not priviledge him from the payment of his rent, and therefore the Law giveth him remedy during his Nonage to have acquittance, 7 E. 2. Age 140.

*Per quæ servitia*, was brought against the heir of him who was Tenant, the day of the fine levied, and he was forced to confesse by what services the lands were holden, 31 E. 3. *Per quæ servitia* 81. So in a *Cessavit* against an Infant, he ought to confesse the services, and tender the arrears, and so in a Writ of customes and Services, by *Thorpe Justice*.

Default, or Non-suit of an Infant.

**A**N Infant made default in a *Precipe quod reddat*, for which a grand Cape is awarded, he shall not loose his Land by his default by reason of his infancy, 3 H. 6. 10. 1. and 2 Ma. Dyer, 104.

If an Infant be non-suit in a Writ of Right, yet he may afterwards have a writ of possession, and if he pray to be received, and sheweth cause, he may afterwards shew other cause, 42 Ed. 3. 13. by *Finchden*.

An Infant brought Detinue of a hundred Charters, and Minuments, and the Defendant brought the Deeds in Court, and because the infant ought to declare how much was contained in every Charter, which he could not do, therefore he was non-suit, and brought a new Writ of Detinue.

Detinue of a Chest locked, and Charters contained in it.

Note, An Infant shall be punished for a Contempt, because *Frustra in legis auxiliari invocat, qui in legem committat*, 2 H. 5. Outlawry lyeth against an Infant if hee exceed fourteen yeares, 2 Mar. Dyer 104. acc. if he make default after the Mife joyned, in a Writ of Right, Judgment finall shall be given against him, 9 E. 4. 36. 3. H. 6. 16. he shall answer the breach of a Prohibition, in a Writ of Excepmēt, 3 H. 7. 2. he shall answer for a felony, *Quia malitia supplet aetatem*, 5 E. 3. An Infant Plaintiff in an Assise shall be assisted by the Court in his pleading, and in making his title: M. 32. Eliz. It was holden *Per curiam in Co. B.* after appearance he shall save his default, not otherwise, but *Quare* of of that case, for Mr. Plowden conceived the Law to be otherwise, for then, one shall never recover against an Infant during his infancy, see where an Infant shall save his default, where not, 6 H. 8 Br. saves default, 50. 7 E. 3. saves default, 52. 75 7 E. 3. 47. saves default, 13. & 2. M. Dyer 12. 104. 7 H. 4. 91. & 11 H. 4 an infant shall answer to all matters of Record which are pleaded against him.

Where an Infant shall not be bounden by recovery had against him during his Nonage, nor by a verdict, which passeth against him.

SEE 13 E. 1. Fitzh. Infant 16. It is said by Mitton Justice, If a man demands the wardship of an Infant, and the seisin of Homage is counter-pleaded, which passeth for the Lord, & the Infant bringeth an attaint, in which the first Judgment is affirmed, and afterwards the Lord doth distrain for escuage, being granted, yet the infant shall not be estopped by the judgment or recovery, so if an Assise of Mortdancester passeth against an infant by default when he is within age, yet he shall not be barred thereby, but may bring a new action when he cometh of full age.

In an Assise, the Tenant pleaded a recovery by himself, in an Assise against the Demandant, the Demandant said, That at that time he was within age, and that 7: S: was Tenant of the Land, of the lease of his Father, and that the Reversion was in him by discent from his Father, and it was holden a good plea, and that the Assise was well brought, notwithstanding the recovery pleaded against him, 26 ass. 6. ass. 25. 20 E. 3. *Quare non admittit* 9. It appeareth that the Husband and Wife brought a *Quare impedit* against the Disseisor of the Defendant, and others, and had judgment to recover, and damages by the Statute, because the six moneths were past. Afterwards the Husband dyed, the Wife within age: And afterwards shee brought *Quare non admittit* against the successor, and counted that the Church was full, and continued full during the time of the Predecessor, and in time of the



the Defendant, untill the Incumbent did resign, and the Defendant pleaded the first recoverie to have estopped the Plaintiff, for to say that the Church was alwayes full, and it was holden no estoppel, because she was within age,

In 18 E.3. 29. *Dower* 61. In Dower the Defendant said that her husband was seised of three Mannors, and holden of the King in *Capite*, and afterwards the Plaintiff brought a Writ of Dower, and had one Manor assigned to her for all the others, being of equal value by the Return of the extent, The plaintiff said, that she was within age at that time, yet it was holden that the Assignment shall bind her, being made in the Court of Chancery.

See 7 H.4.22. Where in a *Scire facias* to have Execution of a Fine, the Defendant pleaded a recovery in Affise against the now Plaintiff, where the now plaintiff brought an Affise, and upon a speciall Verdict found for the now Defendant, and because there was a divorce in the case, which was not given in Evidence at the Affise, and also because they could not find it, being matter of Record, and not matter of fact: therefore the now Plaintiff being then an Infant, had Judgement to have Execution. Note, that *Brook* in abridging of the Case makes a marvell at it, because a speciall verdict shall bind an Infant as well as a man of full age, the Verdict continuing still in force. So *Scire facias* 65

*What things an Infant in his mothers belly shall have.*

IN Dower the Defendant pleaded that the Plaintiff did detain from him certain Charters concerning the same Land, the Plaintiff said that she was with child by her husband, and it was holden that in respect that the Issue which he might have, might have the Lands, and so the Charter which did concern them, that she might keep the Charters, and in that case it was said, that the Issue in his mothers belly might be vouched, 41 E.3.

11. See 31 E.3. *Fitz. Brief* 871. for the Voucher.

One vouched an Infant in his Mothers belly, if God shall give him to be born, and if not, then in the next heir, in a Writ, of Dower, and good, without shewing a deed to shew the binding to warranty, contrary if the Infant had been born at the time, 11 E.3. *voucher* 13. vide 38 E.3. *voucher* 58. and see there Tenant in Tail of the gift of a Bishop vouched him who should be the next Bishop, the Bishoprick being then void, and the Temporalties being in the Kings hand.

See that now  
that such a De-  
vise to an In-  
fant is void by  
the Statute of  
32 and 34 H.8  
adjudge acc. 21  
Jac. in the Ex-  
chequer cham-  
ber, *Sheffields*  
Case.

Note, it is holden in 8 E.2. *voucher* 237. That when one is vouched in his mothers belly, that the party of necessity must vouch another person with him.

A Devise to one in his Mothes belly is good by 9 H.6.23. 11 H.6.14. by *Babington*, vide C.9. part 9. acc. but see 14 Eliz. *Dyer* 304. that such a Devise

Devise is void by all the Justices, for here the Case was, a man devised two parts of his Lands to his four sons in Tail, and if the Infant in the mothers belly be a son, that he shall have a fifth part as co-heir with the other four sons, and if the fifth dieth without issue &c. and it was holden by *Sanders, Dyer, Bendloes & Mead*, that the Infant in his mothers belly took nothing, because he was not capable when the devise should have effect by the death of the Devisor, but see, 11 E.6.13. that by Custome such devise may be good.

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*Where an Infant may waive a demurrer, or voucher, and plead in barr &c contra.*

**I**F an Infant do demur in Law, he may waive his demurrer afterwards, and plead to issue when he pleaseth, 31 E.3. *Infant 7. vide estoppel 244. acc.*

In an Affise brought against an infant, he pleaded an outlawry against the Demandant, and afterwards he waived that plea, and pleaded a release, 14 Aff.15. *Affise 203.*

Dower brought against R. son of W. who appeared and vouched W. Proceffe continued till the Sheriff returned, W. dead, for which the Defendant came and pleaded, that he had not any thing in the Lands, but jointly with A. and demanded Judgement of the Writ, and it was holden that although he was within age, yet he could replead, for when the voucher was granted, it was as strong as a judgement, which shall bind as well infants as men of full age, 18 E.9.6. *voucher 3. acc.*

But if an infant doth pray to be received, and shevvs cause, he may afterwards vvaive that cause, and shevv another cause, 31 E. 3. 13. by *Finchden.*

If a vvoman infant doth accept of for &c. Dower in Chancery of one Dower. Mannor, she shall be barred by such acceptance, 18 E.3. *Dower 61.*

If an infant Lessee for life, doth levy a Fine, or alieneth, he in the Re-*Fine:* version may enter, 18 E. 2. *Fine 120.* *Quere* if he may not avoid it after, and be in of his former estate.

A Fine shall bind an infant if he do not reverse it during his nonage, 21 *Fine.* E.3.24. but if an infant levieth a Fine at this day, and Proclamation passe, he shall not avoid it by Error, *Plo. Com. 370.* by *Callyn.*

An Infant vouched in a Writ of Dower, vouched over *J.S.* who was *Voucher.* returned dead, the Infant could not afterwards plead jointenancy with another because he had vouched before, 18 E.3. *voucher 3.*

If a recovery or a Fine be pleaded against an Infant without any posses-*Recovery.* sion in him, yet it shall bind him, 24 E.3.64.

If the Issue Tenant in Tail being an Infant, entereth into the Land-  
S I
ken



Exchange.  
11 H. 4. 12.  
C. Lit. 51.  
usurpation.  
Lease.

ken in exchange, it shall not bind him if he doth not agree to the exchange at his full age, 3 E. 3. *Formedon* 44.

If an Infant purchase an Advowson, and suffereth an usurpation, he shall not be helped by the Statute of *West. 2.* for the Statute is *pro negligent custod.* which is to be intended of Infants by descent, 35 H. 6. 62.

If an Infant makes a Lease for years rendring Rent, and at full age says to the Lessee, God give you joy, it makes the Lease good, by *Mead* 24 *Eliz. 1.*

Default.

An Infant is not bounden to save his default, at the Grand Cape or Petit Cape, because he never appeared, but if he once appear and make default at the Petit Cape, he must save his default, by the better opinion, *M. 32 Eliz.* in the Common Pleas

*Assumpsit.*

An Infant and others were bounden for the Debt of the infant, the infant at full age promiseth to save the other harmlesse, the Infant dieth, adjudge that an action upon the Case lieth against his Executors upon this *Assumpsit*, but if a feme covert and another had been bounden at the request of the wife, and the wife after the death of the husband, she had promised to save the other harmlesse, action did not lie against her, *M. 29 Eliz.* in *B. R. Barton* and *Edmonds* Case.

Leases.

If an Infant Prebend maketh a Lease for years, he shall not avoid it after. So of an infant made Bishop by dispensation: And if a Prebend makes a Lease with warranty and dieth, and his son is chosen Prebend, the warranty shall not bar him for these Lands, but if a Parson within age makes a Lease for years, *Quare* if he shall avoid it. If a Prebend makes a Lease by *Duresse*, he shall avoid it by *Brown* and *Catlyn*, but if the Bishop enable him to be a Prebend, he shall not have *dum fuit infra aetatem, per Curiam*, 1 *Eliz.*

Warranty

Fine.

Husband and wife Tenants for life, remainder to an infant, they joyn in a Fine, the Fine was reversed, as to the infant, *Englishe* Case, *C. 1.* *part in Bretons* Case.

Fine.

*Worsley* and his wife levied a Fine to *Charnock*, of the Lands of the wife within age, and afterwards brought a Writ of Error to reverse it, and whether the same should be reversed, as to the wife onely, and should bind the husband during his life, was the question; it was resolved, although she came of full age before the reversall, yet because she was within age at the time of the Fine levied, the Fine should be reversed notwithstanding her full age: by the head, and it should be reversed as to them both, against the opinion of *Chandish*, 50 E. 3. 3. and a President in 6 H. 8. where the husband and wife levied a Fine, the Husband died, she took another husband, and they brought Error, and it was reversed onely as to the Wife, but a President in 2 H. 4. and 1 H. 6. was vouched, that the whole Fine should be reversed, as to them both, and so it was afterwards adjudged in *Charnocks* Case, and *Worsley* had the Land again.

Declaration of  
Wfs.

It was adjudged in *Plowdens* Case, that an infant may declare the uses of a Fine as well as a man of full age, *per Curiam*.

If a man layeth out money for an infant, for his meat, drink, and necessary apparel, if he enter into a Bond within age to pay it, it is not good but voidable, so of *Assumpsit*. *Quare* for the difference is taken when the *Assumpsit* is made within age, and when he comes of full age, for at full age if he make promise, or enter into a Bond for necessities taken in his nonage, it shall bind him as it was adjudged, *M. 11. Jac. in Co. B. in Cutters Case*, but see 44 *Eliz. Randalls Case*, adjudge that an Obligation with a penalty for money borrowed within age, is absolutely void, and so it was adjudged, 5 *Jacobi*, in the Kings Bench, in *Bendloes and Hollydayes Case*.

An Infant Copy-holder made a Lease for years by word, not warranted by the Custome, rendring Rent, and afterwards at full age he was admitted to the Copy-hold, and then accepted the Rent, *Quare* if the acceptance doth make the Lease good, it was not resolved, It was *Trin. 2 Car. in B. R. Ashfields Case*. *Lease. Acceptance of Rent.*

If an Action be brought against an infant, and he appears by Attorney where he ought to appear by Guardian or *Prochein amy*, and Judgement be given against him, yet it shall not bind him, but he may reverse it by error, although the Warrant of Attorney be entred, but if no varrant of Attorney be entred, he may demurre, by 18 E. 3. and 14 E. 4. So was it adjudged in *Jones and Lewes Case*, 15 *Car. in B. R.*

An infant cannot be Stevvard of a Mannor in possession or Reversion, *M. 41 Eliz. Scamblers case acc.*  
*C. Lit. 3. b.*

An infant shall do homage but not Fealty, because he cannot be sworn, 21 E. 3. 40.

An infant heir of a Tenement in Socage in chief, vvithin the age of 14 years, at the death of the ancestor shall not sue Livery, nor pay prime seisin, *C. Lit. 77. 20 Eliz. Dyer 362.* contrary if he be above 14 years, 18 E. 3. 26. p. 18.

A man hath six ages in Law, viz. 1. 12 years to be sworn in a Leet; 2. 14 years to consent to a marriage; 3. 15 years for the Lord to have aid; 4. vvithin 21 years to be in Ward for Land holden in Knights service; 5. 14 years to be out of the Wardship of Guardian in Socage; 6. 21 years to alien his Lands, *C. Lit. 78, 79.*

An infant cannot be Guardian in Socage, because a vvrit of accompt vvill not ly against him, 7 E. 3. 46. 31 E. 3. *Infant 9.* but an infant heire in Socage after fourteen years may have accompt against his Guardian in Socage, 16 *Eliz. in Co. B. adjudge, acc.*

An Infant vvho holdeth of the King by Grand Sergeancy, shall do his service by a Deputy of the Kings appointment, and shall not do it in person, *C. Lit. 109 acc.*

An infant brought a Writ of Error to reverse a Fine, and had a *Scire facias* against the Conusee, for vvhom a Protection vvvas cast upon inspection of the infant by the Court, vvho adjudged him to be vvithin age, the Protection vvvas disallowved, and if the Plaintiff die, adjudged that the



heir should reverse the fine for the nonage of the ancestor, contrary if he had died before he had been inspected, *H.12 fac. in B.R. Keckwiche Case; C. Lit. 131. acc.*

If an infant who is a Ward entereth into Religion at the age of fourteen years, Ravishment of Ward lieth against the Sovereign of the house, but the Lord shall lose the Wardship, because the infant is *vivus liter mortuus*, *C. Lit. 137.*

If two coparcenors be, and one of them is within age, and they be Demandants, the Plea shall demurre and be stayed, for the nonage of the one against the other, *L. E.1. Age 128. 44 E.3. Age 47.*

All that which an infant is bound to do by the Law, shall bind him, although he do it without Deed, as an Obligation made by him for necessities shall bind him, *C. 9. part Pinchies Case*, and things which he doth in the right of another shall bind him, as things which he doth as Executor to another. But a release of an infant of a Debt as Executor, without an actuall payment, shall not bind him.

*Vide 8.E.4.4.*

*2 Ma. Dyer 104*

An infant Bailiffe within age shall not be charged in accompt, because by interdict of Law he cannot have skill to make an improyement, *13 E.3. Infant; 9 10 H.4.14. acc.*

*13 E.7. Ley 50.*

*26 E.3.63.*

*Minor non potest minorem*, but an infant shall not wage his Law of Nonsummoned, because he shall not be prejudiced by it; and an infant cannot wage his Law upon oath in Debt, *C. Lit. 173.*

If an infant maketh a Feoffment in Fee, a stranger of his own wrong cannot enter for the use of an infant, *39 Eliz. in Co. B. adjudge*, but if an infant be disseised, there an Entry by a stranger of his own wrong is good, and shall vest the right presently in the infant, *18 H.6.16. 26 E.3. 62. by Thorp.*

*C. Lit. 246.*

An infant shall not be bounden by a discent upon a disseisin made by a stranger, but *Lachesse* shall barr an infant if he do not present within six months.

If an infant do not bring an appeal of the death of his ancestor within a year and a day, he shall be barred for ever; and the priviledge of infancy shall not hold against the King, for if the King dieth seised, and the Land discendeth to his successor, this discent shall bind an infant, *35 H.6.60.*

*35 H.6.41.*

*10. Com. 236.*

*Lachesse* of an infant or feme covert for not performance of a condition annexed to the Land shall bind them; but if a man maketh a Feoffment upon condition reserving Rent, and if he do not pay the Rent within a month, that the Rent shall be doubled, and the Feoffee dieth, his heir within age, vvho doth not pay the Rent, he shall lose nothing by this *Lachesse*, by the Statute of *Merton cap. 5.* vvhich is, *Non currit usura contra aliquem infra atatem existentem*, but yet it is holden, *C. Lit. 246.* that the Statute doth not extend to a Condition of Reduction.

If an infant of 17 years of age release a Debt, it is void, but if an infant make the Debtor his Executor, it is a good Release in Law of the debt.

If a Lease be made to an infant for life, the remainder over to another in fee,

fee; there, although the infant at full age doth disagree to the Estate for life, yet his disagreement shall not devest the remainder which was once vested by good title, 17 E. 3. 38.

An Infant who is in by discent or purchase shall be compelled to attorn in a *Per qua servitia*, or a *Quid juris clamat*, and if an Infant do attorn upon a grant by Deed, it is good, because it is a lawfull Act, but hee cannot be compelled to attorn upon such a grant by Deed, C. 9 part 84. Conyes case 4. Mar, Dyer 137.

In a Writ of Mesne, the plea shall not stay for the nonage of the Plaintiff, because his nonage shall not priviledge him for not payment of his rent, 7 E. 2. Age 140.

In a *Quid juris clamat*, brought by an Infant, if the Plea be stayd by reason of his nonage, the Infant when he cometh of age, shall have all advantages to have the arrerages of the Rent, or for wast, as if the Tenant had attorned at the time of the Action brought, 43 E. 3. 5.

In a Writ of Customes and services, or in a *Cessavit* against an infant, of his own cesser, although he comes to the Tenancy by discent, yet hee shall have his age, because he doth not know what arrerages he shall tender before judgment, and because, if he doth not make a true tender, he shall loose his land, 2 E. 2. Age 132. 9 Edw. 3. 10. 28 Edw. 3. 99. 3. H. 6. 10. acc.

Husband and wife both within age, joyne in a Feoffment by Deed indented reserving rent, the Husband dyeth, the wife may enter, or have *Dum fuit infra atatem*, but if she was of full age, she shall not have *Dum fuit infra atatem*, for the nonage of the husband, although they were one person in Law, 14 E. 3. *Dum fuit infra atatem*, 6. F. N. B. 192.

Note, the speciall heir shall take advantage of the infancy of his ancestor, as if Tenant in tail of Land in Borough English, makes a feoffment in fee within age, and dyeth; the youngest son shall avoyd it, because hee is party in blood, and claimes by Discent from the infant, C. Littleton 337.

If an infant bringeth an action against his Guardian for mony, and recovereth it, if the Guardian bringeth the mony into the Court, and there deposeth it, the same is a good discharge against the infant, and he shall not be sued in an account, so was it adjudged M. 11. 7 ac. in the Common Pleas, in Hughes case.

A man did surrender his Copyhold to the use of an infant in his mothers belly after the death of the Surrenderor, it was adjudged Mich. 13. 7 ac. in Simpsons and Southwells case in R. R. that the surrender was void.

First, Because to an infant in *Ventre sa meer*.

And Secondly, Because it was to begin at a day to come.

In an Action of Debt brought for not performance of an Award, the case was this, Upon a speciall verdict found, Yates and Watson an Infant submitted themselves to an Award; and Yates was bound in an Obligation that Watson the infant should perform the Award, it was adjudged



## Coverture and Infancy.

adjudged in this case, *M. 17. Jac. in B. R.* that the Bond was void, the only question was, whether an infant ought to submit himself to an Arbitrement, or to an award, and it was adjudged by all the Justices, that an Infant could not submit himself to an arbitrement, and then if there were no submission there could be no Award; and so the Bond of *Yates* that the Infant should perform the award, was utterly void, and so it was said to be adjudged accordingly, *Hill 2 Car. in the Kings Bench Rot. 234. in Knight and Stones case*, and in the argument of that Case it was agreed and vouched to be Law, and so to have been adjudged, *7. 4 Car. in Pickering and Jacobs Case*, that a Bond taken of an infant for necessities was good, and so a Lease made by an infant to try his title in an *ejectioe firme* was good, because it was for his apparent benefit, but it was holden that an infant could not bind himself to be an apprentice, & therefore the usuall course was, that others were bound for his Apprentiship; and it was said, that an infant hath not power to dispose of his good himself, and then how can he give power to another to dispose of them, and the power of an arbitrator is so high, that a Writ of Error doth not lie to reverse his judgement.

Note, it was adjudged, *Tr. 15. Car. in the Kings Bench, in Young and Towngs Case*. That the grant of the office of Register in reversion for life to an infant is good, and in that Case it was said by *Jones Justice*, that it was adjudged in *Scamblers Case*, *44 Eliz.* that the Grant of a Stewardship to an infant for life was a good grant, contrary to what is reported by *Coke, 1. p. Institutes 3.*

*What things done by a Feme Covert shall be good, and what not, and what to her.*

**N**Ote by the Court. that a Feoffment made to a Feme Covert, or a gift of goods, or an *Assumpsit* made to her, or a Sale of goods by her, or a Disseisin by her, if the husband agree thereunto, or doth not disagree are good, *27 H. 8. 24.*

Note that a woman now a Covert, who was a Feme sole at the day of a *Precipe* brought, she may wage her Law of not summoned, and the same is good, See *12 H. 4. 24.*

If the husband and wife enter into Land in the right of the wife, where the wife or her ancestors had not any thing in the Lands, yet the wife shall be Tenant, because she cannot waive it during the Coverture, and in that Case the Writ did abate for Misnomer of the wife, *vide 35 Aff. 5.*

A woman who was sole made a Feoffment, to reinfeoff her when she required the same of the Feoffee, afterwards she took a husband, and required then the Feoffee to reinfeoff her, and it was holden that she might make the request well enough, and that the Feoffee might reinfeoff her, *35 Aff. 11.*

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The Deed of a Feme Covert who is bound with her Husband, shall not be inrolled, *Ex quo sequitur*, that the Deed of a Feme Covert is voyd, 7 E. 4. 5.

*Vi. 27 H. 8. 25.* If a Feme Covert sell any thing, the sale is good, if the husband do not disagree, whereunto agrees *Read*, 21 H. 7. 40. but *Finex* contrary, for he held that a Feme Covert could not do any thing which might turn to a prejudice to the husband, *contr.* of a thing which might be for his advantage, for if one give a thing to a Feme Covert, the same is good by the agreement of the husband, because it is for his advantage, contrary if shee buy any thing in the market, for that may be to his prejudice, but if shee buy the same to the use of the husband, he agree to it, the same is good, or if shee be commanded so to do by the Husband, and he said if shee buyeth bread or any thing which is spent in the house of the husband, if he doth know of the buying of it, she shall not be charged therewith.

Note by *Littleton*, 18 E. 4. 10. If a woman Executrix taketh a husband, and after shee releaseth the death of the Testator by Deed in her own name, the same is good, because shee doth represent the person of the Testator, *Chock contr.* and 21 E. 4. 24. but 21 E. 4. 50. 18 H. 6. 4. and 16 H. 7. 5. *Brian* and *Yavifour* are against *Chock* and yet 2 Hen. 7. 15. *Brian* held the contrary, but in 16 H. 7. by *Brian*, there a Feme Covert executrix may do all things which are matters of fact without her husband, as Release, or make Acquittances, or give Goods, But of such things which do appertain to the office of an Executor those she may do without her husband, but in matters of Record, shee ought to joyne with the husband, *Quod nota.*

See C. 5. part in  
Russells case,  
that the wife  
Executrix,  
without her  
husband is not  
good.

See 3 H. 6. 30: That a Woman brought Detinue of a Bailement made when shee was Covert and good.

If the husband and wife are bound in a Bond, for a release of a right which one had to the land of the wife, and the husband dyeth, the wife shall be charged with such bond, 44 E. 3. 33.

It is a *quere*, 14 H. 8. 17: If the husband enter into Religion, if the wife may alien without her husband, but see if the Husband abjure the Kingdom, that the wife is of ability to alien, 31 E. 1: *Fitzh. cui in vita* 31 E. 40 E. 3: 1: and *vi. 2: H. 4:* where it is sayd, *Eccemoda mirum*, &c. that the wife of a man which was in *Exile*, did bring an action in her own name, without naming the husband, but it is there holden, that a Feme Covert cannot disavow the suit of her husband.

See 32 H. 8. That a Feme Covert may be seised jointly with others to the use of her husband, and *vi. 10 H. 7. 20.* that a Feme Covert, the Executrix of *Cestui que use* did sell the Land to her husband, and the sale was good.

See 49 E. 3: 13: by *Bolknap*, That an Obligation made to a feme covert is good.

*What:*



*What Acts shall binde a Feme Covert, what not.*

**I**N a Writ of Right, after the mise joyned, and the wife is re-entred upon the default of her husband, if shee afterwards make default, and shall Judgment is given, shee shall be bound for ever, 44 E. 3. 28.

If a Feme Covert levieth a fine without her husband, if the same be executed, and afterwards the husband dyeth, the same shall bind the wife, 17 Aff. 17.

In 5 E. 3. *Fines* 95. 1. rendred Land to the husband and wife, for which the husband and wife would have granted a Rent, but it was not suffered to pass without examination of the wife.

In 17 E. 3. *Avowry* 95. Dower was assigned to husband and wife of the possession of her first husband, for which assignment the husband and wife granted a Rent, with clause of distresse, it was holden that the grant was void, but it was said, that if the Guardian had rejected, that the assignment was of more then shee ought to have had in Dower, and that by Deed, then the rent had been good by way of Reservation, see to that purpose *Plow. Com.* 141.

If a Feme Covert be received upon the default of her husband, in a *Cyfe* *savit*, and find Sureties, that the Land shall be bounden; the same shall bind the wife, but *quare*, if so in the case of an infant, 19 E. 4. 5.

One enfeofeth a woman, to the intent that shee shall sell the Land, and the mony thereof received shall dispose to the use of the dead, she afterwards taketh a husband, and afterwards sells the Land without her husband, it is holden by *Shard* and *Wilby*, 34 Ed. 3. *cui in vita* 19. that shee shall not have a *cui in vita*, *quare*, for I have heard it to be holden contrary, in one *Gawdyes* case.

In 16 H. 6. *Releases* 41. It is said, that if an infant or a Feme Covert Executor, do release it is good, and so is 21 E. 4. 13. but see C. 5. part, in *Russells* case, that the release of the wife is not good, without the husband.

A man was seised of an advowson to the use of a Feme Sole, she took husband, and afterwards they joine in a grant of the advowson, it is holden 6 H. 7. 3. by *Curiam*, that it is a good grant during the life of the husband, but void as to the wife, *contra*. if the wife joyne in a feoffment, for that is the Act of the wife as well as of the husband.

*Quare* if the Husband and Wife make a feoffment of Land of the Wife which is in use to the wife, if the same be within the Statute of 1 R. 2. and if it be, then what remedy there is for the wife if shee would disagree after the death of the husband, vi. 7 E. 4. a Feme Covert brought a *Subpna*.

*By what acts the husband may prejudice his wife.*

**I**F a man doth enfeof a woman upon a Condition, or make her a Lease Rendring Rent upon condition of reentrie, and she takes a husband who breaketh the Condition, and the Feoffor or Lessor may enter, and the wife shall be bound hereby, 20 H.6. 28. by *Newton*.

33 H.6.31. If the husband doth appoint one to be Attorney for him and his wife, the wife cannot disallow the Attorney.

So if the husband disclaim in Avowry, or claim Fee, in a *quod faris clamat* of Land in the right of his wife, it shall bind the wife, 9 H.6.22. by *Marl.* 30 E.3.28.32 E.3. *Pursuit* 127.

If a woman Lessee for life taketh a husband who committeth wast, it shall bind the wife, 9 H.6.52.30 H.6.30. by *Prisor*.

If a woman Signoreffe hath title to enter for Mortmain, and taketh a husband, who suffereth a year and a day to passe, it shall bind the wife.

If a woman refuseth to be Executor, and taketh a husband, and afterwards he brings an action in both their names, it is a good administration, and shall bind the wife, 33 H.6.31.

If husband and wife be joint Lessees, and the husband prayeth in aid of a stranger, and dieth, the lessor cannot enter. So if the husband and wife covenant to levy a Fine by such a day, and the husband dieth, there the wife shall not be charged with the Covenant, because it was onely the act of the husband, but if a woman be lessee for life, and she taketh a husband who prayeth in aid, it shall bind the wife, 15 E.4.15.

If the husband and wife be vouched, and they come the first day ready to enter into the warranty without proesse, the same shall not be allowed, 45 E.3.11.

Note that a Feme Covert may be a Receiver, and charge the husband in an action, if he agree to the receipt, for issue was taken upon the agreement, 13 B.2. *Fitz. Action* 50.

Husband and wife make a Lease before the Statute reserving Rent, the husband dieth before the day of payment, and before the day she taketh another husband, who at the day accepteth of the Rent, and dyeth, the Case shall be bound thereby because she might have entred before she took her second husband, *Ma. Dyer* 159. vide C.4 part.18 acc.

*What things of the wife, Chattels reals or personals are given to the Husband by his enter-marriage with the wife.*

**I**F the wife be possessed of a lease for term of years, of lands or Tenements, or of any other Chattels realls, and takes a husband, the

T 2

husband



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husband is possessed thereof in his own Right, and may dispose of the same, or may forfeit the same by attainder or otherwise, *Plow. Com. 260. b. acc. C. Lit. 351. acc.*

If the husband be possessed of a term for years by marriage of the wife, such a term for years may be extended for the Debt of the husband. *Per point* being possessed of a Lease for the Term of 99 years, devised the same by his will *in hac verba*, viz. I devise my Lease to my wife during her life, and after her death I will, that the same shall go to my children unpreferred, and made his wife his Executrix and died; the wife afterwards married with Sir Thomas Falster, who being possessed of the Lease, the said Lease was put in execution, and sold upon a *Fieri facias*, upon a recovery of 1401 in debt against Sir Thomas Falster, afterwards Sir Thomas died, and the Administrators of Sir Thomas did afterwards reverse the Judgement given in the action of Debt by a Writ of Error and then the wife died. It was adjudged in this case, 27 Eliz. in the King's Bench betwixt Duddington and Amner, that the sale of the Lease by the Sheriff upon the *Fieri facias* was good, although the Judgement was afterwards reversed. 2. It was in that Case adjudged, that the executory devise of the Lease unto his children unpreferred was good to take effect after the death of the wife, and yet the children unpreferred could not be reduced to the Term, because by the sale the vendee had an absolute property in the Term, and therefore, although the Judgement was afterwards reversed, yet the sale being a collateral act done by the Sheriff should not be voided, but in that Case it was holden, that the children unpreferred should have the value of it.

In 7 H. 6. 2. there the husband was possessed of a Term in the Right of his wife, and charged the same, and the question was, holden, that being a Chattell real, he might, during the life of the wife, have disposed of or sold the whole Term, *a fortiori* he might charge, *Quia quicquid continet majus continet minus*; So if the husband possessed of a Rent charge for years in the right of his wife, or of an Obligation entered to the wife whilst she was a feme sole, the husband may release the Rent or discharge the Obligation, but in such Case if the husband die, the Rent not disposed of, the wife shall have the Rent again, and shall have an action upon the Obligation by *Strange* and *per Curiam*: in such Case when the wife continueth her estate after the death of her husband, she shall be in by the first Lessor, and so she shall hold the Land, discharged of the Charge of her husband.

*Mich. Term 35 Eliz. in B. R.* was this Case, A man possessed of a term of years in the right of his wife, made a Lease for years of the Land to begin after his death, he died and his wife survived him, and the question was, whether the wife should have the Land, or the Lessee, and it was resolved by the whole Court, that the Lessee should have it during his term; for as the husband, during his life might have contracted for the Land, for the whole Term which the wife had in it, so he might do so any

any part of that Term at his pleasure: For if he may devise the Land for one and twenty years to begin presently, so he may devise it to begin after his death, if the term of the Wife be not expired, but for the Remainder of the term, if the Husband made no disposition of it during his life, It was holden in that case, that the Wife should have it.

20 *Eliz.* There was this case, Lands were demised to Husband and Wife for their lives, the Remainder to the Survivor of them for years: The Husband granted over this term for years, and died: In that case it was adjudged that the Wife should have it and not the Grantee, because there was nothing in the one or the other to grant over untill there was a Survivor; and in that case, if the Wife had died, and the Husband had survived, yet he should have had the term against his own Grant, like unto the case. If a man maketh a Lease for life, the remainder to the right Heirs of *I. S.* *I. S.* hath issue a Son, who selleth the Remainder, and afterwards *I. S.* dieth, this Son being his Heire notwithstanding his sale, shall have the Remainder, and not the Grantee, because it was not in him at the time of his Grant, but by matter *Ex post facto*, viz. after the death of his Father.

If a woman hath a right of Action unto or for any chattells real, and taketh a husband and dyeth, the husband which surviveth shall not have the thing, or Action for the same, but the Executors or Administrators of the wife, and so it is if shee hath but a possibility to have a thing, 10 H. 8. 11. 7 H. 8. 3. C. *Lut.* 351. acc. And so it is, if a woman who hath Chattells real, or other Chattells *sui ante dicit*, as Executor or Administratrix, if she taketh Husband, and afterwards dieth, those are not given to the Husband by her inter-marriage with him; and so it is where she is Guardian in Socage, although the Husband doth survive the Wife as it was adjudged 32 *Eliz.* in the Common Bench; and also 31 *Eliz.* in the Chancery, in *Wilbams* case.

If a woman be possessed of a term for years, and granteth the same over to another for her use in trust, and afterwards taketh a Husband and then dieth, the Husband shall not have this Trust, but the Executors or Administrators of the Wife, 38 *Eliz.* *Waterhouses* case adjudge. acc. And so was it also adjudged *Trin.* 15 Car. in the Kings Bench, in Sir John Saint Johns case, where the principall case was; The Lady Cromwell was possessed of divers Leases and Conveyed them in Trust, and afterwards married with Sir John St. John, and afterwards she received the money which came of the Trust, and with part of it she bought Jewels, and other part of it she left in money, and died; Sir John St. John took Letters of Administration of the Goods of the Wife: The Ecclesiasticall Court would have forced him to have accounted for the Jewels and for the money, and to have exhibited an Inventory of them into that Court; whereupon he sued out a Prohibition, and the opinion of the Court was, that the property of the Jewels was in the Husband, and that he should not exhibit an Inventory thereof into the Ecclesiasticall Court. And for the money,



ney, the Court was then some of opinion, that the prohibition would not lye, because the money received upon the Trust was the Trustees money, and the Wife had no remedy for it but in Equity, and then the Husband should have it as Administrator, and so was accountable of it: But Justice *Barkley* was of opinion, that the Prohibition should be cited as to the money also, because the Trust was executed when the Wife had received the money, and by the receipt the Husband had gained property therein as Husband, and therefore not accountable for it; and if the Trustees do consent that the Wife shall receive the money (the contrary to which doth not appear in the case) that there the Husband might gain a property in the money; and at last a Prohibition was awarded for the whole, both the Jewels and the money.

Chattels real of a mixt nature, viz. part in possession and part in Action which happen during the Coverture, as arrearages of rent which are incurred during the Coverture, the Husband shall have them by the inter-marriage with the Wife, *C. 4. part. Ognells case*, 18 H. 6. 9. 7 H. 7. 2. acc. if he over-live the Wife: But if the Husband dieth, and the Wife doth survive them, the Wife shall have them. And now by the Statute of 32 H. 8. cap. 37. the Husband shall have all the arrearages which did incur before the intermarriage, in case he doth over-live the Wife: and so was it adjudged, 17 Eliz. in the Common Pleas, *Rot. 457. in Sharps case*, vi. *C. Lit. 351. acc.* But all Chattels personall which are in the possession of the Wife in her owne right, the Husband shall have them by the intermarriage with the Wife, and he may dispose of the same if he doth survive the Wife, or not, 7 H. 6. 2. & 3. 10 H. 6. 21. E. 4. 4. 4 H. 6. 5. But Chattels personall in Action, the Husband shall not have them, if he and his doth not recover them in the life of the Wife, 3 H. 6. 25. 21 H. 7. 29.

39 E. 3. 17. If a woman hath but a bare possession of Chattels personals, as by Trover or Bailment, in that case they are not given to the Husband by the inter-marriage with the Wife; but an Action of Detinue lieth for them against the Husband and Wife.

## Feme Covert.

**A** Lease is made to Husband and Wife for their lives, the remainder to the Executors of the Survivor of them; the husband grants the term, and dieth: the same shall not bar the Wife, because he had but a possibility and not an interest, *H. 17 Eliz. in B.R. adjudge.*

The Husband cannot give Land to his Wife in his life-time; but he may convey Land to the use of his Wife, or devise to her: But a Feme-covert seised of Lands in fee, cannot devise it to her Husband, because she is *sub potestate viri*, and the Law shall intend it to be done by the coercion of the Husband, *C. Lit. 112. b.*

If a Feme-covert be seised of an Advowson, and the Church void, and the Wife dieth, the Husband shall present, because it is not a thing in reversion, but otherwise is it of an Obligation made to the Wife, *14 H. 4. 13. 45 E. 3. 15. C. Lit. 120. b.*

A Feme-covert who hath an authority to sell Land, may sell the same to her Husband, because shee is but an Instrument, and the interest passeth from the Feoffor or Devisor, *11 H. 7. acc. C. Lit. 187. acc.*

A Feme-covert who is Executor, if she take the Debtor to Husband, it is as no release in Law of the Debt, because the act of Law will not work a *Devastavit*, *31 Eliz. in B.R. adjudge, C. Lit. 264.*

Husband and Wife both within age joyne in a Feoffment by Deed indented, reserving rent, the Husband dieth, the Wife may enter, or have *Dum fuit infra aetatem*, but if shee were of full age, shee shall not have *Dum fuit infra aetatem* of the Husband, although they be one person in Law, *14 E. 3. Dum fuit infra aetatem, 6 F. N. B. 192.*

A Feme-covert cannot surrender her Copyhold Land to her Husband, and such a custome to surrender is void, *25 Eliz. in C. B. Shepmiss case.* So she cannot give or devise her Lands to her Husband, *3 E. 3. br. devise, 34. old N. B. in addition ex gravi querela, acc.*

If a Feme-covert, who hath a Joynture according to the Statute of *11 H. 7.* after the death of her Husband doth accept of a Fine *sur consens de droit*, it is a forfeiture of her Estate, *H. 23 Eliz. in C. B. adjudge.*

If a woman Lessee for life taketh a Husband, and she and her Husband make a Lease for life, rendring rent, and the Wife doth avow for the rent after the death of her Husband, the Lessor may enter, because by her Avowry she hath agreed by matter of Record to the forfeiture, *43 E. 3. Entr. con. 23, 34 H. 6. 1.*

A man



A man enfeoffs a Feme sole upon Condition that she may grant it over for his soule: She taketh a Husband, and both of them make a Feoffment: she shall not have *Cui in vita*, because the Land was given to her upon the same condition, 34 E. 3. *Cui in vita* 19.

A man grants Lands to a Femecover, or Infant, upon condition to grant it over: *Quare*, if during the minority or Coverture the Conveyance be by Feoffment, whether after the Coverture she may enter, because it ought to have been by Fine, as was *Gambles* case, 2, & 3 Eliz. and *Pasc.* 31 Eliz. in the Star-chamber. It was holden by the two chief Justices, that if an Infant be enfeoffed to re-enfeoff, that if he do not mention the re-enfeoffment, the Feoffor shall enter, and if he do re-enfeoff, the Infant may enter, or have *Dum fuit infra aetatem, vi. Plow. Cov. 12. ac.*

If a Feme-covert be enfeoffed, the husband being beyond Sea, who returns and disagrees, yet till entry by the other, the Freehold shall not be devested; but if the husband dieth before his entry, then is the wife remitted, and the title of entry which the Feoffor had, gone, and now he shall not avoid the estate of the wife.

# COVENANT.

## I. How the Declaration in Covenant shall be.

**C**ovenant upon the Deed of the Defendant, that the Plaintiff and his Tenants shall be quit of Suit to the Defendants Mill, &c. and that the Defendant had distrained the Plaintiffs Tenants, viz. A. B. and S. for to do suit at his Mill, &c. and shewed the Deed which was conditionall: And therefore the Declaration was challenged: But yet it was holden good, P. 31. E. 3. *Covenant* 1.

Covenant against Lessee of a Mill, for that he covenanted by Deed to leave the same at the end of the term in as good plight, &c. And it appeared by his Declaration, that the terme was not yet ended, wherefore *Quia caput per breve*: As an Action doth not lye upon a Covenant to build a Hall within a certaine time, before which time the terme is ended. 12 E. 3. *Covenant* 2.

In Covenant against Lessee, who covenants to have it in as good plight, &c. It is sufficient to declare that he was not put to charges to have the Coverture, &c. for he is bound to so more by such Covenant, 4 E. 3. 229.

**Covenant 4.**  
A Writ against the Heire of him who covenanted to leave it in as good plight, &c. after the term ended, he need not declare of a Request made to the Lessee, because the time is past. Also it is sufficient to declare upon a Covenant broken, as waste in houses, and especially how in a Hall, 40 E. 3. 5.

**Covenant 16.**  
A Writ against the Major and Commonalty of D. by the Major and Commonalty of L. for that they should be quit of Toll, &c. And declared that J. and B. Burgors of D. took toll of a Townsman of L. And holden a good Declaration, because the taking of them as Officers, is their taking, &c. 48 E. 3. 17. vi.

**Covenant 22.**  
Covenant upon the Warranty of the Lessor, for the Termor being ejected by the Escheator for the King, doth not lye without a speciall cause, &c. for if without cause, he may have his Action against him, 3 E. 3. 37. F. N. B. 145. acc.

Vi. 32, H. 6. 52.  
b. 46 E. 3. 4. 39  
H. 6. 8. 34 H. 6.  
37. F. N. B. 145.  
acc.

**II. Covenant for the Lessee against the Lessor, &c. contra, and when it all be sued, and upon what Deed.**

**W**hen a Lessee covenants with the Lessor to leave a Mill, or a House in as good plight, &c. although now the Term is so short that it is not possible for him to amend it according to the Covenant, yet the action will not lye before the end of the term, 12 E. 3. Covenant 2.

But if there be such a Covenant, and a Wood be leased, as to the Wood the Action lieth within the term, because it is impossible to leave it in so good plight, 10 E. 1. Covenant 29.

Note, by the Covenant to leave it in as good plight, &c. there is no more intended, but that the Lessee keep the housing with covering, and such necessary reparations so as they do not fall down, for by such Covenant they shall not be charged for the impairment which hath hapned by continuance of time, and is not possible to be redressed; so as the Covenant hath a reasonable construction, 4 E. 3. 29. Covenant 4.

But the Lessor shall have a good Action after the term upon such a Covenant for waste which shall be by Tempest within the term, which is not redressed. But an Action doth not lye upon such a Covenant for Trees blown down by wind, for the impossibility, 40 E. 3. 6. Covenant 16.

**Covenant for a Termor upon an Indenture,** which is, that the Lessor enter for not payment, and shall retaine the Land till agreement be made with him: And the Defendant claimed the re-entry, and they were at issue upon tender at the day: And it was found that parcell was paid, and that

21 Jac. in B. R.  
adjudged acc.  
in Walterer and  
Mouniaque  
case 29.



that he did enter for the residue not tendered at the day. But the same day after the re-entry the Plaintiff did tender the residue, and the Lessor did refuse it, and kept himself in, &c. And now the Plaintiff did tender the residue in Court, by which he recovered the residue of the term, and damages, but the term being ended, the whole in damages. *Fitz. concerneth* that the issue was found for the Plaintiff, 27 H.8. 5. 20 E.3. Covenant 3.  
 The Tenant of the King made a Lease for years to R. who assigned his term to H. with Warranty: Afterwards the Tenant died, the King upon Office found seised the Ward, and ousted the Lessee: He may well have Covenant against R. for the King hath Title: So no Action lieth against the Escheator of *Quare ejecit*, &c. M. 3. E. 2. Covenant 6. And R. shall have Covenant against the Heire at his full age, 34 E.1. Covenant 26. 16 H. 8. 3.

If my Tenant maketh a Feoffment by Collusion, and dieth, and I recover the Ward, &c. the Feoffee shall have a good Action of Covenant against the Heire at his full age, P. 18 E. 3. Covenant 7.

But Lessee by Deed being put out by him who hath not right, shall not have an Action of Covenant upon the Warranty against the Lessor, because he hath good remedy against such stranger, 22 H. 6. 52. Covenant 8. 3 E. 3. Covenant 6. 34 E. 1. Covenant 26. and 26 H. 8. 3. acc. But if he be put out by him who hath right, Covenant lieth although he hath no Warranty, by *Needham*, 32 H. 6. 38. 47 E. 3. 12. 48 E. 3. 22. by *Finchden ac.*

11 H. 4. 5. A Parson makes a Lease for years, and resigns, Covenant lieth against him, but it must be against him: Nuper Parson. Vi. 42 E. 3. 3. by *Finchden*, 3 H. 7. 18. acc. C. 4. part 80. in *Nokes case*, 9 Eliz. Dyer 257

But if the Lessor doth enfeoff a stranger after the Lease, the Lessee may have a *Quare ejecit* against the stranger, or a Covenant against the Lessor, 46 E. 3. 4.

If the Lessor grant the Reversion over, and after Attornment the Grantee looseth the Freehold in a *Precipe*, the Termor shall have Covenant against the Lessor, and not against the Grantee, and that without Deed by *Finchden*, 48 E. 3. 22.

Lessee for years covenants to reparaire and leave the house in as good plight; the Lessee assigns over his term, and the Lessor his Reversion: It was adjudged 15 Jac. in B. R. that the Assignee of the Lessor shall have Covenant against the first Lessee.

The Lessee of the Lessee shall have Covenant against the first Lessor, if the Lease were made to him and his Assigns with Warranty, F. N. B. 145 So without the word (*Assigns*) by *Finchden*, 48 E. 3. 22. F. N. B. 146 C.

Note by *Fines*, that a Lease for years by Indenture shall be good, although there are not other words but words of covenant, 20 H. 7. 12.

A covenant upon a Lease may be brought either where the Lease is made, or where the land is, although it bare date where the Lease is made, 26 H. 6. covenant 9. F. N. B. 146. G.

III. What thing the Plaintiff shall recover in Covenant, whether the Terme, or Damages for it.

**T**He Lessee who recovers in Covenant, shall recover the Term which remaineth, and damages for the occupation of the Lessor, and if the Term be past or ended, or defeated by entry of a stranger who hath Title, he shall recover all in damages, 20 Edw. 3. Covenant 3. Fitzh. N.B. 145 M. 42 E. 3. 24. he shall recover the Terme, vi. 4. Eliz. Dyer, 257.

Note by *Shipwith* and *Knevit*, That if the Lessor put out his Lessee for years, That in a Writ of Covenant, he shall not recover his Term, but all in damages, M. 38 E. 3. 24. Covenant 14. in wast, (See there they spoke of the Heir) but P. 6 R. 2. Covenant 23. It is said by the whole Court, that he shall recover his Term in a Writ of Covenant, and so by all the Justices, 31 Edw. 1. Covenant 31. That a Termor being put out by the Guardian, shall have an action of Covenant against the heir at his full age, and shall have his Term.

IV. Where the Heir shall be charged with the Covenant made by his Ancestor, and where hee shall have an Action upon a Covenant made to his Ancestor.

**I**F my Ancestor covenanteth, that he nor his heirs will not erect a mill in such land, if hee or his son erect a mill and dye, and a Covenant is brought against me upon that, and declares, that I will not abate it, but continue the same, &c. he needeth not to say that I am seised of the Land where, &c. as heir; contrary against Executors, 32 H. 6. 32. Wherewith agrees *Finchden*, 48 E. 3. 1. but *Persay* and *Wichingham* held, that neither the party nor Executor are bound if they be not named, for although that I have nothing, or that the mill be down, the Action lyeth for the levying of the same by my Ancestor, as if the Lessor putteth out his Termor and dyeth, Covenant lyeth against him although he hath nothing in the Land, 4 E. 3. 57. Covenant 5. But see, that *Littleton* saith, if I covenant to build a house and do it not, and dye, Covenant lyeth against my Executor, but not against the heir without warranty. *Nesbarn* and *Littleton* said, the heir is not bounden if he be not named, 33 H. 6. 38. Note, An action of covenant doth not lye against the heir upon the ouster of Lessee for yeares, who hath a lease by Indenture of the Father, unless there be an express warranty for him and his heirs, and that he hath assets by descent.

Feoffee by Collusion being put out by the Lord after the death of the Feoffor, the heir being within age, he or his heir shall have an action of Covenant against the heir when hee cometh of full age, P. 18 Edw. 3. Covenant 7. So shall the Termor have being ousted to the Guardian, 19 Edw. 3. Covenant 25. 31 Edw. 1. Covenant 31. and he shall recover his Term. 24 H. 8. Dyer 14. 25 H. 8. Dyer 22. 21 H. 4. 7. 45 E. 3. 17. 3 Ma. Dyer 114.



*vi. c. 5 part in  
Spencers case,  
that covenant  
doth lye, when  
the covenant  
doth extend to  
a thing in esse.  
42 E. 3. 5.*

*Grandfather's  
and son, A  
Prior covenant  
with the  
Grandfather  
that he and his*

*Covenant would sing every week mass, in a chappell, parcell of the mannor, in the hand of the Grandfather, the Grandfather did give the mannor in taile, it was adjudged in that case, that the intaile should have been against the Ter-Tenants, because the covenant was to do a thing annexed to the chappell, and annexed to the mannor.*

Covenant against the Master and his confreeres, upon a Deed of the Predecessor, that they and their successors should find a Chaplain singing in the Chappell of T. &c. and the Plaintiff was his heir &c. where the Ancestor had aliened the Mannor where the Chappell was, and took it back to him, and the Plaintiff, who surviving, aliened it to B. who married C. now the wife of the Plaintiff, and because it is not mentioned in the Deed, that the Chappell is in the Mannor, and a man may sing in for me in another Chappell, and none can have an action upon this Covenant but the heir, the Writ was holden good, but if the Covenant had been to sing for Lords of the Mannor dwelling in that Mannor, it should be otherwise, which was granted, & the wife ought to be named 16 H. 6. C. 13.

See 16 H. 7. 9. and there the Chappell being specially mentioned, it was a good barr for the time, to say, that the Chappell where &c. was fallen down, and not rebuilt, which thing the Plaintiff ought to do, he which sued, was a stranger to the Covenant, but it was for his advantage.

Covenant against the Prior by 7. as heir of P. upon a Covenant of the predecessor, to sing every week in such a Chappell in the Mannor of K. for him and his servants, it is no plea that he nor his servants do not dwell there; it was also challenged, because the Plaintiff had an elder brother, and he Feoffee of the Mannor, and declared of usage to sing time out of mind in the same Chappell, and the opinion was with the Plaintiff. 42 E. 3.

*C. 5 part Spencers case, vi. 7.  
H. 4. 6, 1 H. 4.  
2. a.*

3. Covenant 17.

See 1 Hen. 5. 2. where Hanke held, that a Covenant should not descend.

If a man maketh a Lease for years and binds himself to warrant the land to the Lessee, his heirs and assigns, the heir or Assignee shall have an Action of Covenant thereupon to E. 1. Covenant, 18.

V. Where Assignee, or a stranger to the Covenant shall have the action, though hee is not heir.

TWO Coparceners make partition, and the one covenants to acquit the other of a certain suit, due for the land, and the parcener to whom the Covenant is made doth alien the land, the Lord doth distrain for suit, hee shall have a Writ of Covenant against the other, which was agreed, because the Covenant goes to the Land, &c. but where it goes with the person, he which bringeth the Action ought to be party or party

*C. 14. 384. 436.*

vy, as heir or Executor of the party, *vi. 42 E. 3. 3. Covenant 17. 2 H. 4. 6. Covenant 13.*

Assignee of Lessee for years shall have Covenant upon a Warranty made to the party, his heirs and assigns, *Edw. 1. Covenant 28. so upon a Lease for the life of T. and ten years over to his Executors and Assigns, without warranty expresse, 19 Ed. 2. Covenant 25 F. N. B. 145. which saith, that the Assignee of the Termor shall have covenant although Assignes be not mentioned in the Deed, vi. 48 E. 3. 22. acc.*

But note, That Covenant doth not lye against a stranger grantee of the reversion, but against the Grantor, *48 E. 3. 22. Covenant 21.* But now covenant lyeth against the Assignee of the Reversion by the Lessee or his Assignee, and a covenant lyeth by the Grantee of the Reversion or his heir, against the Lessee or Assignee by the Statute of *32 H. 8. Cap. 34.*

*vi. C. 5. part Mallorescase, P. 8 Jac. in Co. B. in Brissowes case, adjudge acc. Plow. C. 9. 17. Hill 31. Granger case. 14 Eliz. Dyer 307. Minter case. C. 5. part 54. Knights case. C. Lit. 215. acc.*

V I. Covenant sued by Executors or Administrators, or against them upon the Deed of the Testator.

A Man covenanted to put an Apprentice with A. during a certain term, and esloined him during the term, covenant lyeth against his Executors, and if Tenant in tail maketh a Lease for years and dyeth within the terme, and the termor is put out by the issue in tail, he shall have covenant against the Executors, *47 Edw. 3. covenant 20.* And if the Apprentice depart after the Death of the Testator, the Action lyeth against the Executor, although they are not named in the Deed, and if a man covenant that hee himself will serve me, and departeth, &c. and dyeth, I shall have Covenant against his Executors, *48 Edw. 3. 22. by Finchden.* But if a man covenanteth to enfeof another before such a day, and dyeth before the day, his Executors shall not be charged, so if a covenant be to performed by himself during his life, and he dye before, &c. but if hee covenant to build a house before such a day, and he dyeth before the day, covenant lyeth against the Executors, for they may perform it, *10 H. 7. 18.* Executors brought Covenant upon a Lease for life to the Testator, who covenanted, that if hee dyed within twelve yaars, that his Executors should hold over the term, and it appeared that others were Executors, and not the Plaintiff, but because they refused, the Ordinary committed administration to the Plaintiff, and he took nothing by his Writ *19 E. 3. covenant 24.*

That Executors shall have covenant, see *F. N. B. 145* and there is opinion that administrators shall have an action of covenant, *F. N. B. 146. B.* Executors to repair the houses, ad propria onera not being decayed in default of the Lessee, or his Executors and dyed, the houses were burnt in the default of the Executors, adjudge that covenant lay against them, and damage recovered de bonis testatoris, and not conditionally if they had not then of their own goods.

*vi. 49 E. 3. 2: 28 H. 6. 4. ac. vi. 3. Ma: Dyer 114. Ma. Dyer 114. Hide covenanted with his Lessee to pay quit rents, and dyed, it is a quere there, if his Executors be bound to pay them. but see C. 5. part 16 in Spencerscase holden, Executors are bound to pay. Vi. Finches bock Lit. cap. 17. and 42. E. 3: 2: it is personall & ruit perfo- 02. 15 Eliz. Dyer 324. A Termor covenanted for him and his*



VII. *The Bar in a Writ of Covenant.*

**C**ovenant that he shall not levy a Mill against the Heire, it is no plea for him that he hath not the Land as Heire, nor that the Mill is now abated, if it were levied after the Covenant made by the Ancestor, *M. 4. E. 3. Covenant 5.*

Of a Bar in Covenant by him who is not party, *vi. 2 H. 4. & 42 E. 3.* And of Covenant for to leave in as good plight, &c. and the Bar. See *Division 2. & 40.*

He which covenanteth to marry my Daughter, and she refuseth, yet he shall forfeit his Covenant: And he who Covenants to enfeof four, and two do not come, yet he may make a Feoffment to the four, and deliver Seisin to two, *33 H. 6. barre 62.*

VIII. *In what County Covenant shall be sued.*

**I**f a man maketh a Lease in *Mid.* of Land which lyeth in another County, the Lessee shall have Covenant in which of the Counties he pleaseth, notwithstanding the date of the Deed, *26 H. 6. Covenant 9.* But *Fitz.* conceives that the Writ brought in one County, whereas the Deed beareth date in another County, shall abate, *F. N. B. 146. vi. 3 H. 6. 15.*

IX. *Covenant without a specialty.*

**C**ovenant lyeth in *London* without Specialty by Custome, *T. 27 H. 6. Covenant 11. F. N. B. 146. E.* And a Writ of *Plegiis acquittandis*, without Specialty by Custome, *43 E. 3. 11.* And without Covenant, *F. N. B. 137.* Covenant upon a Deed, Poll *30 E. 3. barr. 167. Perkins 26. and F. N. B. 145.*

And see where a Covenant shall be pleaded by Deed Poll, and by that part of the Indenture, which doth not belong unto him, *M. 11 H. 7. 12.* By *Danvers.*

X. *Where a Covenant lieth against Lessee for life, and if Freehold passe by Covenant.*

**V**Pon a Lease for life with Warranty: Covenant doth dot lye without speciall words, that if he be ousted he shall have Covenant; yet there

it lieth not, if he be put out by him who hath no right, *T. 26 H. 6. Covenant 10. F. N. B. 145.* But see that the Feoffee by Collusion being ousted by the Lord who claimeth the Ward, shall have Covenant, *18 E. 3. Covenant 7.* And if I Covenant, or bargain that *A.* shall have my Land whereof I am seised, the Land doth not passe, nor the use; otherwise it is, if at the time I have Feoffees to my use of the Land, *21 H. 7. 29.* But all is as one, and that the use shall passe by the Bargaine, and that without naming of Heires, by *Shelley, 27 H. 8. 5.*

### XI. Covenant against Pledges.

**T**He Principall found Pledges by Deed; and further, *Obligamus nos & utrumque nostrum. &c.* Now the Party may choose if he will have his Action against the Principall, or against the Sureties, *39 E. 3. Covenant 15.* And if the Covenant be to leave the Land in as good plight, &c. and the reparation is not done during the term, the Action lyeth against the Surety without any request made to the Principall, otherwise it is, where the thing may yet be performed, *40 E. 3. 6. Covenant 16.*

### XII. Covenant against the Husband and Wife, and by them during the Coverture.

**L**ease to the Husband and Wife reserving rent, and they Covenant to make such security as the Lessee shall devise, and he would have a Fine which they do not performe: It is holden that the Wife is not bound thereby, &c. *45 E. 3. 11. Covenant 18.*

### XIII. The forme of the Writ of Covenant.

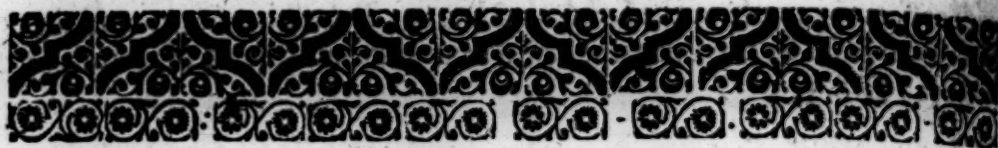
**C**ovenant against a Surety, and the Deed was, That the Principall and *39 E. 3. 9.* *W.* the Pledge had bound themselves, and either of them: And the Writ was *Precipe W. Fidejussor, &c. quod teneat, &c.* between the Plaintiffs and the Principall, and the Writ was holden naught, and the which did suppose the Covenant betwixt the Plaintiff and Defendant, *P. 39 E. 3. Covenant 15.*

The Writ and Deed was of many Covenants, but in the Declaration it is sufficient to declare of one broken, *40 E. 3. 6. Covenant 16.*

A Writ to hold Covenant of all the Land in *D.* without expressing the *vi. 43 E. 3. 37.* acres, & certain quantity, and therefore the Writ abated, *46 E. 3. 3.* But it was holden.



holden good, 47 E. 3. 3. But otherwise it is of a Covenant to levy a Fine.  
In Covenant to levy a Fine, and another Covenant to enfeof, in which  
case a generall Writ shall be according to the Deed, M. 10 H. 13. 6.



# DISCLAIMER.

## I. What Tenant may disclaime, what not.

**T**HE Lord may disclaime in the Seignory when he is charged with Acquittail onely by reason of the Seignory, 14 E. 3. Mesne 7. by *Shard*, vid. 44 E. 3. 2. by *Finchden*.

Lord, Mesne, and Tenant, the Lord avowes upon the Tenant, yet he may disclaime, for he is not Tenant to the Lord. But he may say, that he holdeth of *I. S.* the Mesne by such Services, without that, that he holdeth of the Lord immediatly as he hath counted, 9 H. 6. 25. *per Curiam*.

If the Donor joyne with the Donee in such Avowry, they cannot disclaime: So where an Abbot is Mesne, and joyne to the Tenant, they shall not disclaime by *Genny*, which *Littleton* and *Nele* granted, 12 E. 4. 17. See 38 E. 3. 26. Mesne 19. That he in the Reversion did disclaime in a Writ of Mesne brought by Tenant in taile.

*Vi. 22 E. 4. 47.* Lord, Mesne, and Tenant, the Mesne cannot disclaime, for he is not Tenant of the Land, and he shall not loose the Tenants Land, by 12 E. 4. 17. 16 H. 7. 2. 11 H. 7. 14. 21 E. 4. 3. And by some *quare*, if the Mesne and Tenant joyne, if they may disclaime; But I conceive it is good, and it shall be the disclaimer of the Tenant, and thereupon a VVrit of right of Disclaimer lyeth, yet there is no privity betwixt the Lord *Paramour* and the Tenant, 21 H. 7. 14. by *Keble*.

A Pernor of the Profits, nor *Cestuy que use*, shall not disclaime, for they are not Tenants of the Lands, 11 H. 7. 14. and so is the opinion of *Prisor*, 36 H. 6. 34. for no Disclaimer shall be in prejudice of others, viz. the *Fees*.

An Abbot shall not disclaime, nor an Infant shall not disclaime, the husband shall not disclaime for his wife, 33 H. 6. 27. & 34 *Prisor*, vi. 10 E. 4. 2. 4 H. 5. acc.

*Quo Warranto* was brought against a Bishop, he disclaimed in the liberties: And *per Curiam*, this Disclaimer shall bind him and his Successors to claim the liberties afterwards, 6 E. 3. Br. Disclaimer 47.

If one avow upon his Tenant according to the Statute of 21 H. 8. the Tenant shall not disclaime; contrary if he avow upon his Tenant at the Common Law, 28 H. 8. 20. by Fitzherbert.

## II. In what Writs Disclaimer doth not lye, and in what Writs it doth lye.

**I**n a *Per qua servitia*, no Disclaimer lyeth, because he demands by the Writ no Lands, 8 E. 4. 2. And note by Br. disclaimer 49. 6 E. 2. A man shall not disclaim in a *Nuper obiit* as to the Land, vi. 8 E. 2. Affise 416. A man shall not disclaime in Affise, nor in Dower, nor in any Action where no Land is demanded, vi. 13 H. 7. 27. contr. by Keble. And see 42 E. 3. Age 33. where it is admitted, that Disclaimer lyeth in a *Per qua servitia*.

In a *Per qua servitia*, no disclaimer shall be, but the Defendant may say, that he held not of the Conusor, the day of the Note of the Fine levied, 11 H. 4. 47. 12 E. 3. Disclaimer 13. yet see 33 E. 3. Disclaimer 31. That in a *Per qua servitia* against a Prior, he said, that he did not hold of the Conusor, the day of the Note of the Fine, and the Disclaimer was admitted.

In a Writ of Mesne, the Defendant may disclaime in the Seignory against the Plaintiff, which is not denied, 44 E. 3. 2. *tamen quare*. See 14 E. 3. f. Mesne 7.

In a Reception the Plaintiff may disclaime, but that is not where the Defendant doth avow the taking for another cause, as appeareth by 47 E. 3. 7. and Fitz. Disclaimer 20.

In a Writ of Entry in the *Quibus* of a Disseisin of the Plaintiff or his ancestors against two, one of them would have disclaimed, and was not admitted, because the Plaintiff did suppose him to be the wrong doer, 4 H. 5. Disclaimer 27.

In a *Cessavit* the Defendant shall not be suffered to disclaim, but he may say, that he doth not hold of him, temp. E. 1. Disclaimer 29.

In a Writ of Customes and services the Defendant may disclaim, so in Affise of a Rent, but in a *Cessavit* Disclaimer doth not lye by Keble. In a *Formedon* in the Descendor, the Tenant may disclaim, and the Demandant may hereupon enter, as is holden, 13 H. 7. 27. vide 31 E. 3. Droit 72. But see it agreed, 16 H. 7. 1. by all the Justices but *Vavasour*, that the Tenant may disclaim in a *Formedon*, and *Cui in vita*, and in all other actions where a man shall not recover damages, but where Damages are to be recovered, there the Plaintiff may award him Tenant, but *prima facie*, the Disclaimer is good as it is agreed, 16 H. 7. 1. by all the Justices



## Disclaimer.

Justices and Serjeants, and note although he doth averre that he is Tenant, yet notwithstanding he may after waive it; and may enter, and shall not be estopped, 33 *Ass. Estoppel* 141.

III. *What things follow upon a Disclaimer, and the Effect and Nature of it.*

**W**hen a *Pracipe* is brought against two, and one of them doth disclaim, the interest is vested presently in the other, the reason is, because the Law doth intend that they are both in by one joint Feoffment, and then although the one onely takes the Livery, yet the other is as well Tenant as he, untill he doth disagree in a Court of Record, and then upon his disagreement, all shall be in the other by the Feoffment before made: and note, that *Schard* said further, that if they be Jointenants by Discent, or by Fine, that they cannot disclaim, but yet he conceived they might waive the Discent, if he said the Demandant might shew the Discent, and counterplead the Disclaimer, but note by *Fitz.* in abridging the case, that although one of them which are in by Discent may disclaim, yet that shall not vest the Land in the other, but the Demandant shall have Judgement, *quia nihil dicit*, 95 *E.3. Disclaimer* 23.

*But Danvers and Vavasour held, that the Seignory is not gone, for that it is no Estoppel, but that he may have an Assise.*

Lord and Tenant, the Tenant disclaims in Avowry, yet the Tenant may have a Writ of Right of Ward, and a Writ of Customes and services, for by my Disclaimer my Right is not gone in fact, but at my Election, but as unto the possession in an Assise or Avowrie, the same is gone; but *Schard* and *Wylby* said, that my Seignory is extinct for the whole, and I am forced to my Action for the Tenancy, 34 *E.3. Disclaimer* 24. but of the first opinion, and against *Schard* and *Wylby* is the opinion of *Bryan, Townsend, and Keble*, 16 *H.7.1. viz.* that the Lord is out of possession of the services, and nothing remains but the Right of the Seignory to have Escheat and the like, and Assise, *Cessavit* and such Writs of possession are gone, but *quare* of that, if it be not betwixt the same parties, for if the Lord dieth, and afterwards the Tenant dieth, his heir within age, the heir of the Lord shall have the wardship of the heir of the Tenant, for the Estoppel shall not go to the heir, but onely betwixt the parties to the Avowry, and I conceive that the heir shall not have a Writ of Right for Disclaimer made to the Father, 27 *H.6.2.*

In a *Quo Jure* of a Common, the Tenant doth disclaim, the Common is extinct presently, so of a Rent charge and the like, as it seems by 8 *R.2. Statham. Disclaimer.*

Note, there is a great difference in the Disclaimer of the Tenure, and the Disclaimer in the Tenancy; for if one do disclaim in the Tenure, this disclaimer goeth in Bar of the Rent and services, and for that he shall have *Quid pro quo*, and for the same gives him an Action to demand the Land

Land by a Writ of Right *sur Disclaimer* and the same goes also in Barr of damages, which are but accessories to the principall, but upon a Disclaimer in the Tenancy, if it be in such an action in which damages are to be recovered, there he may award him Tenant to have benefit of them; therefore the Disclaimer there is no barr, and if it be in such an Action, in which no damages are to be recovered, there the party may enter, by *Keble*, in 16 H. 7. 2. *quod nota*, See *Lit.* 155. for *Remitter* a good Case, and *quare* if he cannot enter and be remitted, whether he may recover damages. It seems by 33 *Aff. Fitz. Estoppel* 141. he may waive the averment and enter, and then it seems there is no difference, for the judgement is all one in both Cases.

In a *Præcipe* against two, the one doth disclaim, the other pleads non-tenure, nothing shall vest in him by the Disclaimer, but Judgement shall be given (as it seems) *Quia nihil dicit*, 36 H. 5. 28. contrary, as it seems, if one make default, 33 H. 6. 53. but in the first case the Demandant may enter *per Curiam*.

### *Especiall Disclaimer.*

**A** *Præcipe* is brought against two, one made default after default, and his default was recorded, the other said, that the Demandant held the Land of him, and saving his Seignorie, he disclaimed in the Tenancy, for which cause the Demandant did recover the whole against him who made default, 33 H. 6. 53.

A man leaseth to one for eight years, upon condition that if he do not pay 10 l. within the first year, that then the Lessee shall have Fee, and in a *Præcipe* brought against the Lessor, he durst not disclaim for loosing of the benefit of the condition, and therefore *quare*, if he might not have disclaimed, with a saving of his Condition, 12 E. 2. *Fitz.* so voucher, 236.

In a *Præcipe* brought against husband and wife, the husband as to him did disclaim in the Land, saving to him a Rent charge, and as to the wife pleaded non-tenure, 36 H. 6. 28. by *Fitz. Disclaimer* 9. *Quare*, for it is not so in the book at large.

In a *Præcipe*, the Defendant vouched a Bishop by reason that his Predecessor and the Chapter gave the Land to him in tail, and the Bishop would have disclaimed, saving his ancient services, and could not be admitted so to do by reason of the Reversion, for none other services shall be intended, but those onely, although that the Predecessor did disseise the Tenant who held of him by certain services 40 E. 3. 27. *Vide* 12. E. 3. *Disclaimer* 13. *Vide* 10. E. 4. 2. 12 E. 4. 16. 13 E. 4. 6.



*Where the Disclaimer of the husband shall bind the wife, where not.*

SEe 9 H.6. 52. by *Martin*, the husband may prejudice his wife as in Disclaimer in Avowry, or in claiming fee in a *quid Juris clamat*, and there the wife is without remedy.

In Avowry upon the husband and wife, they disclaim and well, per *Carran*, 35 H.6.10. of which *Brook* makes awards, for 10 E.42. The opinion of the Court is contrary, for thereby the Land of the wife should be lost, 21 H.7.20. agrees to the book of 10 E.4. See 22 E.3. Disclaimer 14.

In a writ of Entry brought against the husband and wife, and a third person, the husband did disclaim for him and his wife, and the Disclaimer was admitted.

In a *Mortd'ancestor* against the husband and wife, and a third person, the husband did disclaim for the wife, and vouched over, vide 6 E.2.br. Disclaimer 50.

In a *Pracipe quod reddat*, the husband appeared and the wife made default at the grand Cape, the husband disclaimed and the Disclaimer admitted good in the absence of his wife, 41 E.3. Disclaimer 11. but see 32 E.3. Disclaimer 25.

The Husband in that case cannot disclaime for his Wife, for then she could not after be received for the default of her husband, because by the Disclaimer she should be out of Court, and she should be disinherited where she is not examined: But I conceive that this Disclaimer shall bind the husband onely, and that the Wife may have an Assise. And see 16 E.3. *Resc.* 102. that notwithstanding the Disclaimer of the husband, that the wife was received in a *Pracipe quod reddat*.

In 13 E.1. *Fitz. Droit* 72. A Writ of Right was brought against husband and wife by an Abbot, and he shewed how that in a Writ of Customs and Services the husband and wife did disclaime, and so he had right against the wife, and the wife was received upon the default of her husband, and joyned the Mife upon the Disclaimer, see if the Plaintiff had more right by the Disclaimer then the wife had.

In a *Pracipe* against husband and wife, and two others, the husband and Wife did disclaime, and the two others did vouch; and it was admitted, 34 E.3. voucher 315.

The husband shall not disclaime for the wife, nor the wife for the husband, for nothing can vest by the Disclaimer, because each is Tenant of the whole, as it was agreed in a manner in 14 H.4. 18. yet see 32 E.3. *Fitz. voucher* 102. That the husband did disclaime for the wife, and it was admitted, he taking upon him the entire Tenancy, and therewith agrees, 22 H.6.2.

*Where one shall disclaime against him who hath but a particular Estate, & e contra.*

**I**N a Replevin, the Defendant doth avow the taking upon one *I.* as upon his very Tenant, which *I.* joyned to the Plaintiff and disclaimed: For which cause the Defendant shewed, that *B.* was seised of the Services, and granted to him in taile, and *I.* attorned, for which cause he prayed Judgment if he should disclaime, whereas we are but Tenant in taile, and the other pleaded his Avowry to estop him, for that he avowed upon the other as upon his very Tenant, 3 *E. 3. Itin. North. Fitz. Disclaimer* 17.

It is holden, that Tenant in Frank-marriage shall not have a Writ of Right upon Disclaimer; But if he in the Reversion joyne, the Tenant may disclaime: So if a Disclaimer be against Tenant in Dower, or Tenant by the Curtesie, they may pray in aide of him in the Reversion, and then the Disclaimer may be well enough, 2 *E. 2. Fitz. Droit* 28.

The Defendant avowed as Lord in taile, the Plaintiff would have disclaimed, and was not suffered; for Tenant in taile shall not have a Writ of Right *sur Disclaimer*, 13 *H. 7. 14.* But if Tenant in taile bring a *Formedon* then the Tenant may disclaime, 13 *H. 7. 14.* & 16 *H. 7. 1.*

A man shall not disclaime against a Termor in a Seignory in a Repelvin, 4 *H. 5. Br. Disclaimer*, 36. 9 *E. 4. 32.*

## *Disclaimer after Confession, or Homage taken.*

**N**Ote by *Needham*, If one do acknowledge the Avowry, yet in another Avowry he may disclaime, 2 *E. 4. 16* And yet see by the Book, 30 *E. 3. 23.* Where a Bishop brought a *Cessavit*, and the Tenant did confesse the Tenure, and tendered the Arrearages as the Demandant counted, the same is an Estoppell for Disclaimer afterwards in another *Cessavit*, or in a VVrit of Customes and Services.

If a man be vouched because of Homage received of his Ancestor, he may disclaime; but contrary if he hath received Homage himself, *vi. 47 E. 3 voucher* 270. *vi. Litt.* in his Chapter of Homage Ancestrell 33.

Note, 27 *H. 6. Disclaimer* 28. that he in the Reversion shall not disclaime; where he cometh in by voucher, by reason of a Reversion, and so is it holden in 40 *E. 3. 27.* where a Bishop was vouched by force of a Reversion in him, and see 10 *H. 7. 10.* that he in the Reversion who made the Lease shall not disclaime, otherwise it is of his Grantee, by *Frowick*.

In a *Precipe quod readat* against one, he vouched two to Warranty by reason of the Reversion, and the one of them would have disclaimed, and



## Disclaimer.

there the Disclaimer (as it seemed) was admitted, but the Court was in doubt how the Reversion should vest in the other, 33 E. 3. Disclaimer 21.

In 8 E. 3. 26. Tenant in Tail brought a Writ of Mesne against him in the Reversion, and did not shew the Deed of acquitail, but onely bound him in respect of the Reversion, and it was holden that he might disclaim well enough, but if he had shewed forth the Deed, he could not have disclaimed, *quod nota*, for the benefit of the Aquitail.

In 17 E. 3. *Quid Juris clamat* 26. It is holden, that he in the Reversion may disclaim when he is vouched, if it be not in case of Tenant in Dover, and so seems to be 47. E. 3. *voucher* 271. vvhhere in Dover the Tenant vouched one as heir, by reason that he held of his Father, and alleged Seisin in the Father of Homage, and that he was alwayes ready to render Homage, and because he did not shew a Deed, therefore it went without day, *quod nota*.

In 14 E. 3. *Garranty* 32. It is holden that the heir of him in the Reversion being vouched may disclaim, so of the Grantee of the Reversion, but note that the Grantee of the Reversion shall not be vouched by the Exception in the Statute of 32 H. 8. of *Conditions*.

Note, It is said by *Littleton* 33. wherewith agrees the books of 10 E. 4. 2. 12 E. 4. 16. 13 E. 4. 6. That if an Abbot or a Prior be vouched by force of Homage ancestrell, although he never took Homage, yet he cannot disclaim in such case, nor in no other Case, because they cannot divest a Fee which hath been vested in their house, yet see 45 *Ass. Br. Disclaimer*. An Abbot purchased Land rendring 10 l. Rent, whereas the Land was but of the value of 5 l. *per annum* and died, his Successor disclaimed and died, and an Assise was brought against the second Abbot, and he pleaded the Disclaimer of the Predecessor and of himself, and the Plea was allowed.

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*Disclaimer against the Lord by the Mesne and Tenant, and for the Lord against the Mesne.*

**I**F the Lord Paramount do avow upon the Mesne, and he joyns to the Tenant, and the two disclaim, the Writ of Right *sur disclaimer* shall be brought against the Tenant of the Land by *Finchden*, and by *Winchingham*. If a man disclaim and dieth, and his heir is in by descent, or a stranger, the Writ lyeth against one of them, or against him onely who is Tenant of the Land, and note there, that the Tenant *Paravail* shall disclaim, and yet he is not Tenant to the Lord, and there by *Kirton*, the Disclaim

for may disclaim, and yet he is no Tenant, 45 E. 3. 17. and 35 E. 3. Disclaimer 22. It is holden that the Writ lieth against the Tenant paravail, vide 14 E. 3. Fitzh. Mesne 7. by Shard, & 8 E. 3. 26 Fitzh. Mesne 10.



# ENQUEST, AND EVIDENCE.

I. Where an Evidence given contrary to the Issue, discharge the Enquest, and where, and what Evidences contrary to the Issue, and which shall not prove the Title, nor maintain the Issue.

**I**N Affise Issue was joyned if the Plaintiff did purchase pendant the Affise &c. and he gave in Evidence that he took the Land upon Condition, that if the said Defendant did make a Recognizance to him, he did agree to the estate, otherwise not, and that he did not make the Recognizance, yet the Writ abated, for that did not maintain the Issue, M. 10. E. 3. 50. Affise 163.

It was conceived it should be otherwise, if the Condition were for to re-enter, *Quare*, if the Defendant had entred *ibidem*.

And where upon a Feoffment pleaded the plaintiff said, that he did not enfeoff *modo & forma*, and the Feoffment was found, upon Condition without Deed or by Deed, the same is against the Plaintiff, M. 11. H. 4. 3. Feoffments 41. & c.

The Counterplea of voucher shall be, that he nor his ancestors had not any thing, without saying whose heir he is, yet if he be a younger son who is vouched as heir, he shall give the same in Evidence, and so was it, P. 12. E. 3. Counterplea of voucher 71. T. 10 E. 3. 30. Counterplea of voucher 63.

If a woman vouch as Tenant in Dower, the heir and the Demandant saith,



saith, that he was seised in Fee jointly with her husband, and saith, that he hath not, that he can endow her, and giveth in Evidence an estate for life with the husband, the same is against him, *M. 12 E. 3. Compterpley of Voucher 70.*

*18 H. 6. 33. If the Issue be matter in Law, he ought to shew it specially.*  
*10 H. 7. 15.*  
*21 H. 7. 28.*  
*19 H. 8. 21.*  
*H. 6. 33. 21 H. 6. 3. per Marchham be must plead the special matter.*  
*20 H. 7. 11. and 28.*

In *Parco fracto* the Defendant pleadeth *Non quibus*, and gave in Evidence that the plaintiff had not a Park by Prescription, nor by Grant, it was good, *M. 18 H. 6. 22.* Action upon the Statute 4. But if in Trespasse or Debt upon not guilty, or that he owed him nothing, pleaded, he shall not give a Release in Evidence, so if he plead not guilty in Maintenance, he shall not give a lawfull Maintenance in Evidence, nor upon that Plea in Trespasse, he shall not give a license in Evidence, but a Lease or a gift he may; and if he plead not guilty in an appeal, he shall not give in Evidence that he did it *se defendendo*, nor that the dead stole Deere there, and that he is keeper, *T. 12 H. 8. 1.*

If in Rescous by the Lord the defendant plead not guilty, he shall not give in Evidence that he doth not hold as the plaintiff hath declared by *Vavasour and Bryan*, and if he said that nothing is behind in Avowry, he shall not give in Evidence that he doth not hold of him, and *Vavasour* alledged a Judgement, that he who in detinue said, that he did not detain, could not give in Evidence, that he had the thing of the Plaintiff as a pledge for money not yet paid, *&c. T. H. 7. 3.*

In an Assise upon never seised, so as he could be disseised pleaded, the Plaintiff did alledge that he as Sonne entred, because the defendant did consent to Ravishment, the heir may well give in Evidence, proving that he did not assent presently, denying the Entry of the Plaintiff, if not by wrong *&c. M. 5. E. 4. 7. & 8.*

A Writ of Entry in the nature of an Assise, and counted of Seisin, as *de libero tenemento*, and by Evidences it appeareth that he hath seisin of tail, this is good, for if tail, he shall not shew the discent in his Count in this Writ, *P. 33 H. 6. 14. Entry 24.*

*13 E. 4. 4. acc.*  
 In Assise Feoffment pleaded, the Plaintiff said that he did not enfeof *modo & forma*, and the Deed found, and that the Attorney which ought to have made Livery upon Condition, made it without Condition, the same well proves the Issue for the Plaintiff, but upon a Feoffment made upon Condition without deed, he ought to say that nothing passed, *T. 11 H. 4. 3.* for he cannot give in Evidence the Condition, where he hath not the Deed, and upon the matter he may say that he did not enfeoffe.

But *Prisor* held, that if one intitlesh himself by a Deed in which there are diverse Conditions, and he doth not shew the Deed, nor speaketh of the Conditions in pleading: he shall not have advantage thereof in Evidence, for the Court shall not conceive it to be the same deed which was granted, *M. 31. H. 6. Feoffments 103.*

It was holden, that he who pleads a Feoffment by Deed, where the Plaintiff saith, that he did not enfeof *modo & forma*, shall not give

in Evidence a Feoffment without deed, nor a Feoffment by another deed, no more then if hee had pleaded that nothing passed, or that he did not enfeof by deed, *P. 13 E. 4. 4. Issue 129.* So upon That he did not give *modo & forma*, he shall not give another gift in Evidence, but contrary by *Finchden* and *Torp*, where one pleads a grant by deed of a thing which passeth without deed, and that he may well give in Evidence a grant without deed, or by another Deed, although that the other doth traverse that he did not grant by the Deed, because the Grant and not the deed is the effect of the issue, *41 E. 3. 1.*

The defendant pleaded a deed of the Plaintiff in Barre, who alledged the same to be by *Dureffe* at *D.* and Evidence was given that the defendant never came at *D.* yet it was found for the Plaintiff, because the place was not in issue, *14 H. 4. 35.*

In debt upon arrearages of accompt, the defendant pleaded that he owed him nothing *modo & forma*, and gave in Evidence that he never made such Accompt, and holden good if true, or if he hath paid him, *P. 20 H. 6. 24. Issue 68.* but he might have pleaded that there was no such Accompt.

In Waste upon no Waste pleaded, he gave in Evidence that the Plaintiff did grant to him that he might cut down &c. to repair, and said that the house was ruinous, for which &c. and the Evidence was held contrary to the Issue, and the Plaintiff did recover, as if he had given in Evidence, a License to do waste, but he might have given Evidence that it was by thunder, or by the Kings enemies, by *Brach*: *Quare* of that difference, *12 H. 8. 1.*

Avowry for fealty and Rent, and upon Out of his Fee pleaded, he did alledge Seisin of the Rent, that doth not prove seisin of the Fealty, nor seisin of suit by *Fitzb.* for this is contrary to the Avowry, supposing the tenure by fealty and Rent. *Baldwin*, it proves that it is within his Fee, and that is the issue, *Fitzb.* contrary, yet the party did passe that, and said that the suit was for another Cause, *T. 27 H. 8. 21.*

Upon, Nothing passed pleaded, *Bryan* thought that he could not give in Evidence, that it is not his Deed, for that is confessed in the Plea, *M. 2 Ma. Dyer 5. H. 7. 13.* but he himself and *Keble* contrary afterwards, because if it was not his Deed, nothing passed by it, so both stood together, *5 H. 7. 8.*

A Bill of 200 l. the Plaintiff did suppose that he had bought so many cloaths for 400 l. the Defendant waged his Law, and by the Custome of *London* he shall be ousted of his Law by any paper sealed by the defendant, testifying the Contract, and the paper shewed was, that he bought the cloaths for so much, upon condition that he should take two precious stones, and certain rings for part, and should have the rest in money, and it was holden no Evidence, for it cannot be intended the same Contract, *M. 39 H. 6. 36. Debt 68.*

And where in an Assise of Land, the Defendant pleaded a gift in Tail, *Sue.* the:

*M. 2 Ma. Dyer 112. In Debt upon an Obligation, defendant pleaded Non est factum, and gave in Evidence that also the money was paid, that the plainiff pulled off the Seal, and shewed good Evidence to maintain the issue.*



the remainder over by deed enrolled, and the deed is of an Office, the same doth not maintain the issue, for in a Formedon of Land, if he shew a deed of an Advowson, it is naught, although he need not shew any Deed, *H. 1. H. 7. 28. Monstrance defails. 110.* agrees, if a deed prove Tail where the partie claims fee, or if the Deed belong to another, and not to him, *M. 41. E. 3. 23.*

Trespasse for taking away Timber and boughs of trees felled, Defendant pleaded not guilty, and gave in Evidence a Custome that the Tenant in *Boscagio Manerii* used to have Estovers to burn in *neccessario socialis terris & tenementis*, and entitled himself to a house and Lands, and because the Evidence given in was, that the Custome did extend to Lands and Tenements, to which estovers cannot belong, and he entitled himself to a house and Lauds, it was adjudged that the Evidence did not maintain the Issue, *M. 12. Jur. acc. Co. 1. B. Eves. de Chichester Stedwicks Case.*

So vide 14 E.  
liz. Dyer 305.  
A man pleaded  
Ne unquam  
Executor, and  
gave in Evi-  
dence an admi-  
nistration, and  
good. Quere,  
if he ought not  
to have pleaded  
it in absence of  
the Writ. 9 E. 4  
33.  
T. 16. H. 7. 11.  
acc.

Executors pleaded, that they had nothing in their hands, the other gave in Evidence that they had redeemed a pawn of the Testator, but the same was with their own monies, for which cause their Issue was held good, *20 H. 7. 2. & 4.*

Trespasse, the Defendant justified for Common for 10 beasts by Prescription, and gave in Evidence Common *per vicinage* Prescription, and it was holden that the same did not maintain their Issue, *13 H. 7. 13.*

So if a man claim Common generally, and give Evidence of Common appendant, if they find for him, an Attaint lyeth: so if he entitle himself to a Rent charge, and gives Evidence for a Rent-service, *39 H. 6. 17. & 18. vide M. 12 E. 3. acc.*

But in a Writ of Entry, of ten acres of Meadow upon a Disseisin to the Predecessor, they were at issue upon the disseisin, and the Evidence was, that in the Seisin of the Predecessour it was a Marsh covered with water, and made Meadow afterwards by the turning of the Water by the Tenant, and the Writ was not abated by that Evidence, *H. 33 E. 3. Entry 80. See 1 H. 7. 28.*

**I I.** Where the Jury shall take notice of a thing done in another County, or of a spirituall thing or of a Record.

**A**ffise of a Rent was taken by default, and a deed was given in Evidence of a Rent bearing date at *L.* out of the County, yet the Affise was taken *29 Aff. 6. Affise 27. 6. 7. H. 7. 8. Endicment 24.* So where the Tenant pleads to the Affise, the plaintiff gave a forreign Release in Evidence, *9 E. 4. 49. Scire facias 50.*

Annuity against a Parson, who pleaded a Resignment before *L.* but of the County it was holden, that he ought to confide, and so

not Parson, so of a divorce pleaded in another County, he must conclude his wife, and the same shall not be tried where the Writ or where the Church is, and upon the divorce or resignation given in Evidence, the Jury shall take notice of it, although it be a spirituall thing in a forrein County, and the Jury may take notice if the Defendant took the profits, 7 E.4. 16. Breif 161. And the Resignment is but Evidence, of which the Jury ought to take notice, 9 E.4. 49.

Finchden saith, in an Assise of a Rent where the Issue is, whether the charge is by deed, if the Land be not directly, but by a mean charged by the deed, the Assise shall not be adjourned but taken there, 43 E.3. 2. But see if the Deed of the Ancestour be pleaded against an Infant, although the Infant shall not answer to it, yet it was holden, that the Assise shall be removed to enquire thereof in a forrein County, and if the Justices do enquire thereof by the Assise, the same is Error 21 Aff.8. Error 79.

A deed of Feoffment dated in a forrein County was tried by the Assise, 2 E.3. 3.

Debt against Executors who pleaded, that they never were Executors, nor Administred as Executors, and Evidence was given, that the Testator gave them the goods by deed in another County, the Jury must find the deed upon pain of an attain: So after the Mife joyned in a Writ of Right, they found a forrein Release given in Evidence, upon pain of an attain, and note the same is no Administration, M.9 E.4. 40. Executor 36.

Vide 18 E.4. 12. That the Jurors are to take notice of a Condition upon pain of Attaint, where it appeareth upon Evidence, Nul tort, nul disseisin pleaded.

Avowry for homage, and the taking was in *Middlesex*, the Plaintiff did alledge tender of the homage at *B.* in another County, and issue was upon the tender, and the tender found by a Jury of *Surrey*, to the damages, &c. and it was said that damages could not be assessed by those of *Surrey* for a taking in *Middlesex*, but the contrary was holden by the Court, and the matter was affirmed upon a writ of Error brought, yet in a plea of land upon a release in a forrein County pleaded, and found there they shall not enquire of damages, but a writ shall issue for them where the land is, because they are the principall, but in this action the damages are the principall, 21 E.3. 56. Enquest 7. so upon a forreine release pleaded in trespass, the Jury shall tax the damages, 7 H.7. 8. and *Thorpe* said, that in all cases, where the Enquest have power to enquire of the principall, they have power to enquire of the damages, 44 Ed. 3. 6. But see 11 H.4. 56: 19 H.6. 8. That in the cases before said the Justices in their discretion may award a Writ to enquire of the damages.

Trespasse of assaule and Marnasse in *Norfolk*, by reason whereof he could not go about his business in *Suffolk*, those in *Norfolk* shall finde the damages in *Suffolk*, and if my receiver of three countyes be beaten in one of them, I shall recover damages for the service lost in all the Counties: So if one detaineth my release in one County, whereby I may loose my land in another County, &c. M.37 H.6. 2. trespass 8.



*Enquest and Evidence.*

If a man saith, he is an alien, it shall be tryed here, and it shall be tryed here whether a man do convey to *Burdeaux* another ship then from *England*, and the Assise shall find a Release in a forraigne county 7 H. 7. 8.

In an Assise, the birth of a man alledged to be in another county was to be tryed by a Jury of both countyes, and of the one County there appeared enough to make the Jury, and of the other County there appeared but one, yet the Jury shall be of both Counties, for one County cannot find things done in another County, and therefore the one which appeared of one County was joyned with the others who appeared of the other County, to try if there were more in the Town of the same Jury, for *Winch.* said, that Jurors of one County shall take notice of the person of a man of another County, because he is removeable, as that one of another County hath done a Trespasse here, but they cannot find a thing done in another County and give Judgement, although *Kirton* did not agree to the same, *M. 48 E. 3. 30. 30 Ass. 42. Enquest 41.*

A man was endicted in *Middlesex* for procuring of *J. S.* there to kill *J. D.* who killed him at *Barwick*, and the Justices sent to *Barwick*, to know if the Justices there had any endictment there against *J. S.* there thereof, *E. 4. 48. Coron. 33.*

And see, that a man endicted in *London* before Coroners of a stroke in *Middlesex* whereof he died in *London*, and it was holden void, for that of *London* shall not enquire of a stroke in *Middlesex*, and in an Appeal the Triall shall be by both Counties, and if they cannot joyn, it hath been the use to bring the body where the stroke was, and there to enquire of it, *6 H. 7. 10. Endictment 23.* but *Hussey* and *Keble* were of opinion, That the party might be endicted where the stroke was, for that is the principall, and the death, but the Accessory, and he who hath notice of the principall, shall take notice of the Accessorie in another County, *7 H. 7. 8. Endictment 24.*

But Appeal shall be good, supposing that he strook him in one County, whereof he died in another County, but an endictment ought to be in one County onely, *4 H. 7. 18 Coron. 60.* and here shall be no joyning of Counties. But by *Hussey* and *Fairfax*, endictment in one County of goods stolen in another County is void, but an Appeal good in every County where they are carried, but Trespasse shall not be found in another County, then where the taking was upon pain of Attaint, and therefore an acquittall in another County was no Plea upon an Endictment, *M. 4 H. 7. 5. coron. 62. See Stamford 182.* That this difference is in Law, because he may be well endicted in every County, and see the Statute of *2 E 6. cap. 24.* for the Triall in such Cases.

Presentment in *Dale* before Justices in *Eyre*, where the Nuisance was, and the Land drowned in another County, and it was good, but if the Defendant doth deny the Nuisance supposed, the Presentment & his Plea shall be

sent to the King, and then determined by Commission, or before the same Justices upon enlargement of their authority. And *Scrope* said, That if a man doth commit a felonie in one County, and is taken upon an Appeal of an Approver in another County; and the Approver appeareth before the Justices in *Eyre*, they shall proceed; so he thought if he dye in one County of a stroak given him in another County, 3 E.3. *Itin. North.* Aff. 446.

In trespass for breaking of his Close, and cutting of his Wood, &c. and carries it away, to all but to the cutting the Defendant pleaded, Not guilty And as to the cutting, that the plaintiff commanded him at N. in the County, &c. And the cutting found for the plaintiff and damages assessed for that only, and he had Judgement for that. And note, they did not enquire of the damages in the other County for the other Trespass, but a *venire facias* issued forth of those where the Writ was; but not for the Costs. M.33 H.6.55. Judgement 39.

*Hody* said, that it is in their discretion to cause the Forein Enquest to enquire damages for the whole, or not; For if one Defendant makes default, and the other pleads a forein issue, they may award a Writ of Enquirie of Damages against him who made default presently in the same County without making another Enquest to enquire of the same, and so it was done. And if 3. in Trespass joyn several forein issues, and every one is found for the plaintiff, and take intire damages, the Court may choose which of the Enquests shall stand for the damages. 19. H.6 8. *Trespass*. 35.

*Forgery* of a false Deed was brought in *Kent*, supposing thereby that he was disturbed of his Lands in *Kent*; and of his Tenements in *London*; and several issues, pleaded in *Kent* and *London*; and being found for the plaintiff in *Kent*, they taxed Damages for the whole Conditionally, that if he be found guilty in *London*; but they severed the Damages in *London* from those in *Kent*; and also the Costs. 21 H.6. 51.

*Decies tantum*, upon Not guilty pleaded, and Evidence given of their taking money where the Action was brought, *Brian* conceived, that if the Jurours certainly know, that the Defendants have taken in another County, and not here, that they cannot find him guilty, others contrarie, and that attaint lyeth upon that. As Affets in their hands pleaded in D. and the Evidence prooved the Affets in S. they found Affets. 22 E.4. 19. And upon Not guilty in a Trespass local in another County Attaint lyeth: not if the issue be in a trespass transitory, as Battery, &c. 39 H.6. 9. *Choke* 9. 9. E.4. 49 9 H.6. 63. but there *Paston* and *Moyl* held the contrary in battery; and with them agrees *Hugley* 4 H.7. 5. and 6.

Vi. 37 H. 6. 3: acc. where the Jurours in one county shall take Notice & enquire the Damages in another County in a Writ of Forgery of false deeds See 44. E. 3. 6 acc. in the case of Battery.

Y y

Where



III. Where the Jury shall take Notice of a thing done beyond Sea, and of a spiritual thing.

**M**ortdauncester brought of the seisin of C. his Mother, the Tenant said that the Demandant had an elder Brother living; the Demandant said, that he dyed beyond the Sea; the Tenant confessed that he went beyond the Sea, but said that he was living there: and if that be not found, then he said that C. did not dye seised, and it was found that the elder Brother was alive, and that C. dyed seised, wherefore the Demandant did recover, saving the Right to the elder Brother, when he shall return. 13 E.1. *Mortdauncester*, 47. And in Dower, the Tenant did averr that the Husband was alive at *Anignion* in France, and was received to prove it. *M.19 E.3. Tryal* 58.

In *Mortdauncester*, the Vouchee said, that Demandant had another Brother, who was banished, &c. who overlived the Auncestor, the Demandant said; that at the time of the Abjuration supposed, the Brother took upon him such a Habit, and went beyond Seas, without returning and demanded Judgement, if the other should aver that he did survive, without alledging special matter; and the Assise afterwards taken at large, said, that he was banished in the life time of his Father, and took such a Haven, and did not return, wherefore they did not know whether he was alive. And found the dying seised of the Auncestor, but did not know whether the Demandant was his next heir, but that was acknowledged by the party of the vouchee; wherefore the Demandant did recover against him in value. 25 Aff. 11. *Mortdauncester*, 28.

The Tenant in a *Mortdauncester* did confesse that the Demandant was next heir, saving that he had an elder Brother, who went beyond the Seas 18. years past; and did confesse, the dying seised; wherefore without further enquire he had seisin, *Salvo jure* of the elder Brother *canon* *nerit*. 12 H.3. *Mortdauncester*. 55.

In Assise, a gift in tail was pleaded to the Husband and Wife, and to the Tenant their issue, and that the Donor did release: the Assise found the gift accordingly, but that there was a Devorce betwixt them, & the heir of the Husband did enter who was plaintiff, to whom he in the Reversion did release, and nothing was spoken of the Devorce, but said, that they found the release which was not pleaded. *T.12 E.3. Verdict*, 31.

By a Commission an Office that T. was born during the espousals betwixt Cousins, and they divorced and married again by licence, and have issue, and so E. heir, and the Devorce was in a forrein County, and good, and he by Office a forrein release shall be found, *Hank* was of opinion that they ought to send to the Bishop to certifie if there was such a Devorce. *H.5 H.5.2. Verdict*, 16.

In Account before Auditors, and said that he had delivered to the plaintiff so many Caskets with Jewels to the value in *Brittain*, that he did accept of the Key, and afterwards at *D. in England* he did deliver him the Caskets with the Jewels, &c. and *Thorpe* was of opinion, that that which was done in *Brittain* was not to the purpose, if they were not of such value in *England*, for the Common-law cannot trye it, but *Fitz.* doth not report that saying. *H. 41 E. 3. 3. Fitz. Account 23.*

Where a Writ was to be abated because the plaintiff was made a Knight pendant the Writ; It is no plea that he is beyond the Sea, and was, &c. nor that he was not within the 4. Seas made Knight, &c. but he shall plead that he is not Knight, &c. & *quare* what shall be done if he were made a Knight beyond Sea for that doth appear. *7 H. 6. 17. Issue 46.*

Note by *Hussey* chief Justice, where an Action is commenced in the Spiritual Court, and upon that matter comes in Issue triable by our Law, yet it shall be tryable by their Law; as if a man sue there for a Horse devised, and a gift in the life of the Devisor is pleaded, it shall be tryed there, & *contrario*, where the Action is begun here, and a spiritual thing comes in Issue, it shall be tryed here, as ability of a man dead. And where the Original begins in *England*, and the rest is to be performed in another Realme, yet it shall be tryed here, as a Contract to serve me upon the Sea, or beyond the Sea, or purchase of Bulls from *Rome*, the Action shall be brought here & tried. And if it be pleaded that one was born beyond Sea, and the other saith, that he was in *England* at *D.* he shall not traverse, because the other ought to maintain that he was born beyond the Sea, and traverse the birth in *England*. *M. 1 R. 3 4. Tryal. 29. Vi. 15 E. 4. 15.* That he who pleads performance Condition to bring Bulls to serve in *Normandy*, &c. the other shall aver that he was then at *D.* in *England*, without any traverse, as of the birth before because by such traverse it should be tryed beyond Sea; And *Catstey* said, that if a thing to be done beyond Sea, cometh in Issue, it shall be tryed by process, &c. See *15 E. 4. acc.*

And it is sufficient to suppose the Contract begun here, though it be false, if it begun not upon a Deed bearing date beyond Sea, *48 E. 3. 3. P. 2. 8. Eliz. in Dowdalls case*. But if it be confessed to be all done beyond Sea, how it shall be then tryed, *B. R. adjudg acc.*

The King brought a *Quare impedit*, & counted that the Church was void by miscreancy and scism of a Cardinal, &c. who was presented to the Pope, *48 E. 3. 3. 17. H 7. 16. C. L. 1. H 161. Belknap*. This Court shall take notice of that miscreancy, for a Deprivation after an Appeal to the Court of *Rome* shall be tryed as well here in the Court of the King in such Writ, as it were in the Arches. And if a man be adhering to the Kings Enemies in *France* or *Scotland*, it shall be tryed here where his Land is; and the Deprivation at *Rome*, or the miscreancy shall be tryed where the Church is, as it appeareth by the Judgement there. *6 Ely. Dyer 128. 19 E. 4. 39. 2 E. 4. 1. M. 5. R. 2. Trial. 52.*

*Quare impedit* by the King for temporalities void upon avoidance in creating one Bishop of *W.* beyond the Sea, and good, for the special avoidance



## Enquest and Evidence.

dance shall not come in Issue, but generalie, that the Church voided, P. 19 E. 3. Tryal 47. But if one who hath not Land adhereth to ye Enemies, or if the league broken be pleaded; or wool shipped otherwhere then at *Calles*, these shall be tryed by the Country in *England*, but *quare* in what County, for *Littleton* could not tell: H 19 E 4. 6.

The Wife being received in a *Scire facias* brought against the Husband and Wife, said that she had a Coheir not named in the Writ, the plaintiff said that she was born at *Roos* in *Scotland* out of the Kings allegiance, the Tenant said within the allegiance, and the Tenant was driven to shew the place of the birth, because parcel of *Scotland* was within the Kings allegiance, and part out of his allegiance; and the matter shall be tryed by the Rolls of the King, 42 E. 3. 2 Brief. 551.

Debt the defendant said, that the plaintiff is a Monk professed at *Din Normandy*; and it was not allowed without alledging him to be under the obedience of some in *England*, for reason of Tryal, H. 12 H. 4. 16. *Nonability*. 2.

IV. Where Evidence shall not be given after the Affise awarded;  
And when after Enquest by default, and when after Issue be  
shall give Evidence to prove the point of his Writ, And what  
Evidences the Jury shall have with them.

**I**N a *Mortdauincester* the Tenant was ready to hear the Affise; Now he shall not give in Evidence that the Plaintiff was born before the marriage, for he ought to have pleaded that, and by praying Recognisance of the Affise, he did admit him to be mulier, P. 12 E. 3. *Mortdauincester*, Vi. 12. Aff. 3. *Bastardy* 13. acc.

After the Enquest awarded by default in a *Quid juris clamat*, the defendant could not give any thing in Evidence 10 E. 3. 32. *Old N. B.* 175.

A Writ of Entire of a Common; The Tenant said that he did not disseise, and when the Jury did appeare *Laycon* said to the Demandant that he shew his Evidences for title to the Common; for it was not in the Writ, or how you were disseised, P. 4 E 4. *Entire* 34.

In *Trespas*, they were at issue; and one part of fine was shewed to the Justices, and they said that the Jury should not have that part, for the party shall not have advantage thereof in pleading if it be not *sub pede sigilli*; but by the plaintiffs consent it was delivered to the Jury 34 H. 6. 25. *Enquest*. 19.

A deed not sealed shall not be given in Evidence to the Jury 26. Aff.

If the plainy deliver and Escrow in Evidence to the Jurours which was not shewed in Court, it is void, and the plaintiff shall not have Judgment, although it were in affirmation of the former Evidence 10 H 4. 10. 11 H. 4. 17. *Vide Enquest*. 37. But the Jury after they are departed to a house together, may come back to see or hear Evidence of a thing where-  
of

of they were in doubt at any time before their verdict given. *T. 26 H. 8. 5.* It is agreed, that if they agree the sooner by reason of such escrowe, or Bill delivered them, that all is void. *H. 35. H. 6. Examination 17.* And it is there said, That the Jury shall be fined, if it be found upon their Examination upon their Oathes, *Vide 14. H. 7. 30. acc.*

## V. Where Evidence shall be of a thing before memory, and the Jury shall take notice of it.

**A** Confirmation of King *Hen. 2.* made upon his grant, which was before he was King is not pleadeable, because before time of memory, yet such debts may be given in Evidence, upon the general Issue, *12. H. 4. Avowrie 58.*

Annuity claimed by prescription, The Defendant shewed that there was an agreement between the Predecessor of the Defendant and the Predecessor of the plaintiff without the Covent, that he should have the Annuity, &c. without that, that he was ever seised before that time, time out of mind, &c. And shewed that that was in the time of *E. 1.* and good. So he made the Jury take notice of a thing done in the time of *E. 1. M. 20. H. 6. 3. Prescription 6.* the matter was in a Replevin. See *33 H. 6. 31.* in an Annuity.

At the Common Law before the Statute, Prescription to the Jury was, If they had not consens nor information to the contrarie, nor their Ancestors nor other person. So at this day if nothing to be shewed to the Contrarie, But the party may shew that the house out of which the Annuity is demanded by Prescription, was erected in the time of King *John*, or after the time of *Richard the 1.* and so cause the Jury to enquire of a thing out of their remembrance. And note, that for that cause the plaintiff would not shew the deed in Evidence to prove the Annuity. *P. 34. H. 6. 36.* See *19. H. 6. 75.*

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## VI. When Evidence shall be given upon an Enquest of Office.

**A** Prior did recover in value, and the Sheriff delivered him more then he ought, for with the vouchee had an Extent, and *sicut alias* to extent both Lands, and the Prior the Tenant dyed, and the Successor prayed that he might not be put out without Summons, *Malm.* upon this Writ, the party may shew his Evidences at the day of execution of the Writ, and afterwards the Sheriff shall extend the Land. *M. 12. E. 2. Extent. 6.*

Where



*Where the Enquest shall be demanded, or stayed, and for what cause delayed, and where demanded upon a peyn.*

**I**F in any Action the Defendant do demur in Judgement to parcel, and to other parcel are at issue, no Process shall go to summon the Jury, till the Demurrer is adjudged, *M. 2 R. 2. Enquest. 2.* And so it was adjudged in Waste. 48 E. 3. 15. But there *Belknap* held in Waste & Trespass *Quere*, for he was then but a Serjeant, and 11 H. 4 5 agrees with him, and 7 E. 3. 17. but there the Judgement stayed till the Demurrer was decided

In Assise, the Tenant pleaded a Recovery, and the estate of the plaintiff was mean, and they were at issue upon, Not Comprised, &c. and Process went against the Summons and Veiors; And the Jury were demanded, to the end they might (as it seemed be amerced) if they did not appear, and if they did appear, then nothing was to be done, until the matter in Law was decided, as if a matter in Law be pleaded, if Assise lye in the Case, the Iustices use to adorne the Assise from day to day, and at every day the Jury shall be called; yet their Verdict shall not be taken if they come, till the matter in Law be determined, 41 E. 3. 11. 48. *Ass. 1. acc.*

Although the Jurors do appear, yet none of them shall be demanded upon a peyn, unlesse the party pray it, 4 H. 6. 7. *Pein 1.* And where they do appear and are pricked, and the time is past, and the Array being affirmed day is given, and the next day one of the Jury doth not come, and the parties wil not demand him upō a peyn. *Gboke* said, That it is the Coure in Assise where a Jury appeareth, and afterwards maketh default, that he shall not be called upon a peyn but at the prayer of the party; and the peyn shall be to the value of his Land for a year. *Danby* agreed as to the value of the peyn; and said that he was to be demanded upon a peyne, and afterwards he caused other of the Jury to be demanded, and the Enquest remained for want of Jurours, *M. 4 E. 4. 39. Peine 2.*

In Assise, a Jurour was called upon a peyn to the value of his Land for a year, because he was in the Hall and came not; and because no Jurour shall loose any thing, if not the Enquest do remain for his default; And this Assise did not remain for his default, but because there were but 5. of the Jury which had the view; therefore he did not loose the peyn, 9 E. 4. 5. But if a Jurour be challenged, and the next day he be found indifferent, and being called doth not appear, he shall be fined to the value of his Land, although the parties do not pray it, or challenge him, &c. and that for his contempt. But if he had not appeared before, yet the Justices may enquire of he be in the Hall without the prayer of the parties 36 H. 28. *Challenge 47.* And if the parties do surmise it, he shall be called upon a peyn, 48 E. 3. 30.

If two Pannells are to appear upon an Issue in 2. Counties, and of one pannel

one pannel, but one doth appear, yet the others shall be called upon a pain at the prayer of the parties, and the same shall be tried by two of the other Iury, 48 E.3.30. *Enquest* 42.

A Iury was demanded upon a pain, It was testified that they were in the Town, by which the pain was forfeited, and now the Plaintiff did surmise, that there were enow of others in the Town to make a full Iury, and because the pain is forfeited at the prayer of the parties before, he was not admitted to say so, for if a full Jury should be, the King should lose his Fine, but if the other had not been called upon a pain, it had been otherwise, 30 *Aff.* 3. *Enquest* 50. and *Thorpe* would not call them in an *Affise* upon a pain at the prayer of the party, and that was holden to be against Law, 30 *Aff.* 42. *Enquest* 51.

VIII. *Where the Enquest shall be awarded by default, and where not, and where Distresse to hear the Judgement shall be awarded.*

**I**N Wast the Defendant pleaded to issue, and at the *Venire facias* returned the Defendant did not appear, the Enquest shall not be taken by his default, but a Distresse to hear Judgement, H. 18 E. 3. *Enquest* 3. See of this matter the Statute of *Marlebridge*, cap. 14. and *West* 2. cap. 27.

One did avow for a Rent, and after Issue the Avowant made default, and the Jury came to the Barre, and yet no Enquest was taken by default, but a distresse to hear Judgement, because it is the first day after the Enquest, but if it were the second day, the Enquest should be by default, P. 20 E. 3. *Enquest* 11.

Upon default in a *Quare impedit*, the defendant made default, they did not give Judgement without a Distresse *ad audiendum Iudicium*, but the Distresse was not entered, but the Summons onely in Error, H. 15 E. 3. *Error* 72.

In Debt at the *Capias* they were at Issue, and the Defendant by mainprise, and appeared not, the Enquest was taken by his default, and the same was good without Proceffe against the Main Pernors, 38 E. 3. 14. but M. 13 H. 2. *Proceffe* 192. contrary Proceffe against the Main-pernors and not the Enquest by default, and in such case after issue no Esloin nor default.

In Accompt, the Defendant being outlawed, had a Charter and *Scire facias*, the Plaintiff declared, and they were at issue upon traverse of the receipt, and day given without sureties by negligence, at which day he did not appear, and the Court awarded a Writ to take his body, and the Enquest was taken for his default, H. 18 E. 3. *Enquest* 4. and if at the *Exigent* the Defendant had traversed the Receipt, and found Sureties,



## Enquest and Evidence.

ties, and afterwards made default, the Enquest should be by his default, *P. 24 E. 3. Enquest 10.* See that a *Capias* was awarded in such Case, *ad audiendum Juratores*, & by some he hath lost his challenge, *H. 22 E. 3. process 172.*

Debt upon an Obligation against an Executor, who pleaded fully administered, and at the *Venire facias* returned, he was essoined, and at the day he was essoined, *De servitio Regis*, at which day hee did appear by Attorney, and did not warrant the Essoine, for which the Plaintiff prayed damages for the Enquest, but the Enquest shall not be taken by default, for that is a double penalty, yet in trespass the Plaintiff shall have the one & the other in the Kings Bench, but that was said was not like in debt, *21 E. 3. Enquest 8.* But at the *Venire facias* in a *Quid juris clamor*, the Attorney did cast an Essoine, and that was quashed, and the Enquest awarded by default, and not challenged after, *10 E. 3. 32. Enquest 47.* But in a Writ of Ward he came by Proclamation, and pleaded to issue, and the plea was without day by protection, at the resummons the Defendant was essoined of a common Essoin and afterwards of the service of the King, and the day made default, and *Hill* award a distresse to hear the Jury, *15 E. 3: 3: Judgment 130.*

In a Writ of Ward, the Defendant pleaded to Enquest, and the Plea was without day by protection, and at the Resummons the Sheriff did return, that the Defendant had nothing, yet the plaintiff had not the Enquest by default.

Re-attachment in Trespass, the Plaintiff and Jury did appear, and the Enquest taken by default *per Curiam*, *Bryan*, it should not be by default upon resummons, &c. *Jenny* contrary, and said, that such Case was so ordered before him in the Kings Bench, *M. 1 R. 3, 4.*

In a personall Action the Defendant at *Nisi prius* made default, and that was recorded, and afterwards a stranger cast a protection for him, and that was recorded, and at the day in Banck the protection was repealed, and thereupon the Plaintiff had the Enquest by default, and if the Defendant had appeared at the *Nisi Prius* taken by Attorney, and cast a protection, although the same were repealed after, the Plaintiff should have the Enquest, but not by default, *4 E. 4. 1. Enquest 23. 21 H. 6. 20. Enquest 28. 11 H. 6. 14. Nisi prius 3.* But if he make default at the day in Banck, it shall be by default, *21 H. 6. 20. Enquest 28.* But if the Defendant had made default at the *Nisi prius*, and without recording of it, the protection had been cast and repealed in Banck. It seems the Enquest shall not be by default, *14 H. 6. 2. Nisi prius 2.*

In annuity they were at Issue, and at the day which the Enquest had, the Defendant did not appear, and the Enquest was awarded for his default, *7 E. 3. 22. Enquest 45.*

Attaint in *Middlesex* of a false Verdict in a *Præcipe* brought in *Surrey* against *T.* and the Sheriff returned that *T.* had nothing. Now the Plaintiff shall not have the Enquest by his default, but a Writ to the Sheriff of *Surrey* where the first Writ was brought *42 Aff. 14.*

## Enquest and Evidence.

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But see at the day of the Distresse against the Grand Jury in Attaint, the Enquest was taken by default of those of the Petit Jury *P. 22 E. 4. 1.* So at the day of Distresse against the Petit Jury, where many of them do not appear, *12 H. 6. 6.*

But see according to *42 Ass.* That an Attaint shall not be awarded for the default of the Tenant, where he was not summoned, if he hath any thing in another County, for which Proceſſe upon the *Testatum* issued into *Cornwall, T. 21 E. 3. 18 Attaint 37.*

An Appeal of Rape, the Defendant pleaded not guilty, and because he appeared not, *Capias, Alias, Pluries*, and Exigent awarded, and if he appear and render himself pendant the Exigent, he may endeavour to make the Enquest to appear again, for it was without day by the Exigent, and they would not take the Enquest by default in Case of Felony, *16 Ass. 13. Coron. 173. 26 Ass. 51. Coron. 196.* where he did escape after not guilty pleaded. *vide Stamford 70.*

And note, Proceſſe shall be *ad audiendum Judicium*, but by *Stamford 70. in 16 Ass. 13. a Capias ad audiendum Juratores*, according to *19 E. 3. Exigent 10.*

A Writ of Mesne against three, upon not distreined in their default, at the *Nisi prius* they did not appear, for which the Enquest was awarded for their default. *Finchden*, In an action reall, as Mesne, Customs, and services and *Quid Iuris clamat*, the Enquest shall not be by default, but a *distingas* in lieu of a Petit Cape, *Skipworth*, here it is well taken, because upon not distreined &c. the Aquitail is confessed, and the Enquest is to be taken for the dammages onely, so personall, and that seems to be the opinion of the Book, for the Iudgement was given upon the Verdict, and he said in a *Quid Iuris clamat* upon a Fee claimed, and afterwards he makes default, that the Enquest shall be taken by default, which *Green* denied, and said, that he had forfeited his Land, *M. 30 E. 3. 28. Receipt 12.* but see before in a *Quid Iuris clamat* upon such a Plea, the Enquest awarded by default, *T. 10 E. 3. 32. Enquest 47.*

*Pracipe* against two, at the *Nisi prius*, one made default, Petit Cape shall be in Banck, and not the Enquest by default of his Moiety. *Quere* of the other Moiety, *M. 12 H. 6.*, and before or after Issue in a reall action shall issue a Grand or Petit Cape, and the Enquest shall not be by default, *T. 37 H. 6. 31.*

Detinue, they were at issue with the Garnishee, who made default at the *Nisi Prius*, and a Protection cast and repealed in Bank, and the Plaintiff prayed Deliverie of the Bond, because this is a Default at the *Nisi Prius* although it bee now repealed, did save the default at the *Nisi prius*, otherwise it should be, if the Protection had varied or been insufficient, because there it was never good, *4 H. 6. 9 Detinue 3. 10 H. 9. 20* See, it is holden that he shall be condemned, and the Enquest not taken by default, *8 H. 6. 5. Condemnation 2.*

An Office was traversed, and Proceſſe was against the Guardian of the

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Land



*Enquest and Evidence.*

Land assigned by the King and against the Enquest, and the Guardian did not appear, for which the Enquest was taken, and Execution awarded, 29 *Ass. 43. Livery 10.*

In an Annuity upon a Deed denied, and default after a *Distringas* issued *ad audiendum judicium*, and he appeared not, and Judgement was given, *H. 6 E. 2. Judgement 230.* and so the party was condemned upon default after a Deed denied by the Court in Debt, 9 *H. 5. 13.*

IX. *More, Where the Enquest shall be taken by default, and where a man shall be condemned for default, or for not pleading.*

**A** Writ was awarded to enquire of Waste against the husband and wife, and at the return she prayed to be received, and the same was counter-pleaded, and at the day given she made default, for which judgement was given without any Enquest, *T. 15 E. 3. Judgement 132.*

If in Debt, Accompt or other personall action the Defendant pleads a Release or Acquittance, and afterwards doth not appear, he shall be condemned, but if it were arbitrement, payment or other matter in fact, the Enquest shall be taken by default, 5 *E. 4. 6. Condemnation 4. T. 37 H. 6. 31. 45 E. 3. 1. Condemnation 14. 1 H. 7. 1.* But if upon such default, after release pleaded, the Enquest be taken, the same is well enough, 42 *E. 3. 1. Condemnation 12.* the party was condemned by default after *Duresse* pleaded, *M. 9 H. 5. 13 Condemnation 7. M. 11 H. 4 32. P. 14 E. 3. Condemnation 18. 8 E. 3. 55. 9 E. 3. 27. 15 E. 3. Condemnation 27. 5 E. 3. Condemnation 24.*

*Vide 21 H. 7. 25. Seems by the Law to be otherwise by* A *Scire facias* upon a Recoverie against two Executors, they were at issue (it doth not appear what the issue was) and upon default of one Judgement was given, *T. 21 H. 6. 45.* but see 21 *H. 6. 7.* that the Issue was because the Sheriff had levied the money by a *Scire facias*.

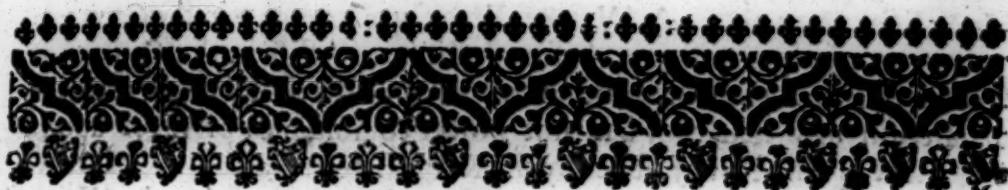
*Read, 10 H. 7. 2. 4 H. 7. 5. 16 H. 7. 4. 37 H. 6. 17. 7 E. 4. 8.* Debt upon an Obligation, a defezance was pleaded upon Condition, they were at Issue, the Defendant made default, upon which the Enquest taken, found for the Plaintiff, where it should not be taken no more then upon a Release pleaded. *Green,* the Judgement shall be upon the default, and not upon the verdict, and so it vvas, *Wich.* because the Enquest is taken vve may have judgement upon the verdict, *P. 32 E. 3. Condemnation. 17.*

Upon default after *Duresse* pleaded, the Enquest shall be by default, and a *Distringas ad audiendum furatores*, but upon a Release pleaded, *Distringas ad audiendum judicium* shall issue, *H. 13 E. 3. Condemnation 21.* But upon *Duresse* pleaded, and default before Issue, proccesse shall be *ad audiendum judicium*, as if the Defendant came before by *Capias*, a *Capias* shall issue *ad audiendum judicium*, and if he doth not then appear, *Quare* what shall be done, *M. 11 H. 4. 32. Condemnation 10.*

And upon Infancy pleaded in Debt and default made at the *Nisi prius*, the

the same was recorded, and at the day in bank, had a Distress *ad audiendum Juratores*, and at the day of the *Nisi prius*, you ought to have preyed the Iury, *M. 8 E. 3. 55. Condemnation. 22.*

But see contrary, *Distingas ad audiendum Judicium* awarded here upon *Non sana memoria* pleaded, Hill said, *Non sana memoria* is no Plea of self, *Vide 5 E. 3. 70. Condemnation. 25.*



# ERROR.

*And when it must be brought, and in what Courts.*

**A** Writ of Error; is Writ which lyeth either for the plaintiff or for the Defendant where an Erronious Judgement is given, in a Court of Record; or in any other inferiour Court, who have power or Jurisdiction to hold plea of any summe above forty shillings, or of any Trespas or other cause, where the damages do amount unto forty shillings, *F. N. B. 20. b.*

*H. 27 H. 6. 27.* A Writ of Error was brought against Executours, and it was shewed that upon *Nisi prius* in London it passed for the Defendants, and day given, till 15 *Hillarii*, at which day there was Judgement given for the defendant. And the plaintiff brought a Writ of Errour, which bore date two dayes before the fourth day after *quindena Hillarii*, and whether the Judgement were so passed, that Error did lie before *quarto die*, was the Question, And the opinion of the Court was, that the Writ was well brought; and it shall be as if the Judgement were given the first day; but if the Writ of Error had bin brought before the first day, then the same had not bin good, because there was then no record of the judgment, yet *2u.* of that. For that in 3 *H. 9.* A writ of Error was brought before the Judgment was entred, and it was holden by the whole Court to be good, and *W.*



33 H.6.46. That the partie hath four dayes after the return of the writ of Curtesie, for the appearance ought to be at the first day if the plaintiff be there, as it is in a Writ of Right, if the Demandant do not appear on the first day, it shall turn unto a default.

If Judgement be given in an Assise before Justices in the County do W. if Error be therein the party may have his Writ of Error returnable in the Court of Common pleas, or in the Court of King Bench at the Election of the party, *vi. old N. B. 55. acc.*

In 8 Eliz. Dyer 250. A Writ of Error was brought in the Common Pleas upon a Judgement given before Justices of Assise in the County of Monmouth, and the Defendant in the Writ of Error did demurre to the Jurisdiction *viz.* that they had not power to hold plea of Error upon a Judgement given before Justices by the Kings Letters Pattents; and there upon long debate it was the opinion of all the Justices; that the Writ of Error did not lye.

A *Quare impedit* was brought against the Bishop of Salisbury and the Incumbent; Verdict passed before Justices of Assise for the plaintiff, where upon Judgement was given for them, and a Writ awarded to the Metropolitan, and a Writ of *Fieri facias* to the Sheriff for the Damages, the Defendant notwithstanding brought a Writ of Error to remove the Record in the Kings Bench and had also a *Superfedeas* to the Sheriff, and afterwards assigned Errors. 6 E. 6. Dyer 67. *haca*. See like Error brought in the Kings Bench upon a Recoverie in an Assise, and the Judgement affi-

7 H.6.28. Hel-lebrands case. med, 23 Eliz. Dyer 375.

A writ of Error In 2 R.3.1. The case was, that 3. men did recover in an Assise against B. and others. B. and the others brought a Writ of Error in the Kings Bench, pendant which Writ, one of them dyed, and the Court having no notice of his death, did reverse the Judgement; afterwards those who recovered in an Assise, and against whom the Judgement was reversed, brought a Writ of Error in the same Court, and assigned for Error that one of the Plaintiffs in the first Writ of Error was dead, and one of the Questions in that case was, Whether a Writ of Error did lye in the same Court before the same Justices, upon a Judgement given in a Writ of Error, by themselves in the same Court; and although it was strongly objected, that the Judges of the same Court may reverse a Judgement which is given there by themselves, as in Case they may Reverse a Judgement. where a Process of Outlawrie *erroniè emanavit*; and may make void a Fine which is levied of Lands which is Auncient Demesne, in their Court, and the Lord restored to his Writ of discent, yet the better opinion of the Book here, and after the opinion of all the Justices, *M. R.2.30.* was, that a Writ of Error, upon a Writ of Error to reverse a Judgement given by the same Justices in the same Court would not lye, *Vide la brum.*

Officer, and not of the Judges, it was adjudged that they might reverse the same, and amend the Roll, and it was so adjudged. See the many cases pur, where the Judges may reverse a Judgement for Error in the Process, and for other Causes in their own Court.

15 E. 4. 216. If a Record be removed out of the Court of Exchequer into the Exchequer Chamber, by Error; when Iudgement is given, all shall be remanded, and Execution shall be awarded in the Exchequer: but that <sup>11 E. 3. cap. 12</sup> seems to be by the Statute of 31 E. 3. which gives the Writ of Error of Error in the Exchequer.

*II. When a man may assigne Errors in Fait, and whennot, and What Matters in Fait may be assigned for Error.*

**I**n a Writ of Error brought by the Uncle and the Nephew upon a Iudgement given against the father and the uncle in a Writ of Meine brought against them of Lands in *Gavelkinde*. This Question did arise, whether they might assigne for Error, that the Father dyed pendant the first Writ, because the same is matter in Fait which the Uncle might have pleaded and have abated the Writ, and it was holden that forasmuch as the matter proved the Writ abated; that the same should be admitted. But see there by *Burton*, That if the matter had proved the Writ to be only abatable, by taking of a husband pendant the Writ or the like there it had bin otherwise *Vide 19. Aff. 8.* Note out of that case. 2. things. 1. That a Iudgement held against a dead person is not void, and 2. That by death the Writ is abated.

In an Action of Debt brought, An Exigent was awarded where no *Pluries capias* issued forth against the party, and the party appeared and pleaded, and Iudgement was given against him. And afterwards he would have alledged the same for Error, and he was not suffered so to do, because he might have pleaded the same at the first. But it was holden, that if the Original had bin naught, there after pleading he might have alledged the same for Error, but if the matter which the party alledgeth, be matter in Fait which he might have pleaded there, he shall not assigne the same for Error, 36 E. 3. See *Error 82.*

In 38. H. 6. 10. and 39 H. 6. 17. In an Affise, at the first day. 2. of the Iurours were sworn, and afterwards the Affise remained for want of Iurours, and at the second day, the parties appeared, and the Iurours, and the Iury was full and found for the plaintiff, The Defendant thereupon brought a Writ of Error upon the Iudgement, and assigned for Error, that no entrie was made upon Record for the 2. first Iurours that they were sworn, nor that any *Habeas Corpora* was returned the second day, nor any continuance upon Record, but a remembrance made upon the Back of the Panell that the 2. Iurours appeared and were sworn. And although it was upon examination of the Prothono. said by them, that it was not the course to enter any thing in an Affise, till a full Iury appeared and were full, and the

*Note 18 E. 4. 19 by Choke where the Tenant or Defendant dieth at any time pendant the writ, the writ is abated, and yet he shall have writ of Error, but where the writ is abated only, he shall not have Error.*

Record



Record made appear, yet the opinion of the Justices was, that it was an ill Course; and the not doing of the same was Error, for it was said that perhaps the Plaintiff had released after the *darrein continuance*, and if no mention were of the Continuance, he could nothave advantage thereof, and the course of the Prothonotaries ought not to prejudice the parties, and if one or both the Jurors which were first sworn, should at the second day be challenged, the party could not then say, that they were before sworn upon a Record, and if one Juror were withdrawn at the first day, if the same were not upon Record, at the second day he might be sworn again, but it was agreed that in a *Pracipe quod reddat*, and other the like Writs, when a Plea is pleaded, then it shall be entred upon Record, and there Processe shall not be awarded to summon the Jury before the parties be at issue, and when issue is joyned, it ought to be entered upon Record, and then Processe awarded.

Note, it was holden by the whole Court, 15 Aff. 8. In a Writ of Error, that the Judges *ex officio* ought to reverse the Iudgment there given, although the party had pleaded and admitted, the Writ good the principall Case there was, that an Assise was brought against one Guardian of the Church of B. and pendant the Writ the Guardian did resign, and the Writ was brought against him, not naming of him Guardian, and thereupon the Successour brought a Writ of Error, and alledged the matter aforesaid for Error, and it was adjudged that the Writ of Error was well brought.

If Iudgement be given in the Court of Common Pleas, or in the Kings Bench, and the Record be removed in another Court, there the Plaintiff may assign any Error in matters in fait, but if he do assign Errors in Law, and afterwards hath a *Scire facias* against the party *ad audiendum Error*, there he cannot assign for Error and matter in fait, as in the Case in 1 R. 1. after a *Scire facias* brought, the Plaintiff cannot assign for Error, but one of the Plaintiffs in the cause where Iudgement was given was dead, whether at the time or before Iudgment was given, F. N. B. 20. 2. E. 3. 24 Fitz. Error 10.

In 22 E. 4. 46. A Writ of Error was brought in the Kings Bench to reverse a Iudgment given in the Common Pleas in a Writ of Dower, and assigned for Error, that the Tenants in the Writ of Dower did appear by Attorney, whereas no warrant of Attorney was entered and prayed a Writ to certifie whether any warrant of Attorney was entered, or not, and there the opinion of the Court was, that he came too late to assign any such Error in fait, because that if a Writ of Error be once sued, and the Record be removed, if the party will assign any Error, which is matter in fait, he ought to assign the same before any *Scire facias* issued forth against the defendant, and in the principall Case it was said, that the party had brought a *Scire facias*, and the entrie of the Warrant of Attorney is matter in fait, and ought to be certified by others then by the Justices, who certified the Record, and by bringing of the *Scire facias* against the party,

party, he had affirmed the whole Record, and the partie cannot alledge the want of warrant of Attorney to be diminued, for Diminution is where the party saith, that the originall, the Grand Cape, or the Exigent, is in the inferiour Court, and if there be no warrant of Attorney, then the same cannot be diminution of the Record, for if it should be diminution, then it ought to be of a thing which is in esse, which is contrary to what the party himself affirmeth.

In 5 H. 7. 4. A writ of Error was brought upon a Redisseisin, and the Error assigned was, that whereas the Sheriffe had returned that at the place where the Tenements were, that he with the Guardians of the peace, and the Coroners took the Enquest, the Defendant did alledge for Error, that the Sheriff did not come to the Tenements as he had made his returne: It was objected that the same was error, for that the Sheriffe had two powers in him, one as Judge, and another as officer to the Court, and the coming to the Tenements, he was to do it as Officer, and not as Judge, and therefore his Return was erroneous, he not being there, but the opinion of the whole Court was, that what the Sheriff did in that Case he did as Judge, and not as Officer to the Court, and in no Case a man shall be received to alledge any thing contrary to that which a man doth as Judge, and therefore it cannot be Error, for it cannot be assigned for Error, that the Justices of the Common Pleas did not give the Iudgment, but that the Clerks entred the Judgment of their own accord; or that no Juror was sworn, or the Jurors gave their Verdict for the Defendant, and that the Judges gave Judgment for the Plaintiff, because the same is contrary to that which they do as Iudges, and therefore because in the Principall Case: the Sheriff had certified, that at the place he took the Verdict as Judge, therefore to say that he was not there, is not good; for a man shall never be received to traverse directly the Return of the Sheriff, as to say, he was not summoned, or attached, but he ought to say, that he was not attached by 15 dayes, or not summoned according to Law, and therefore the Error was disallowed, *vide P. N. B. 11. Br. Averment against the Return of the Sheriff, 16. vide 3 E. 4. 22. and P. 5 E. 4. 2. acc.*

A man outlawed of Felony brought a Writ of Error, and assigned for Error, that the Exigent issued forth, 22 E. 4. in which year the said King dyed, and that he was not demanded but twice in the time of King E. 4. and *Farico exactus* in the time of R. 3. and yet he was outlawed, and upon debate had before the Iustices, the same was holden for Error, because by the demise of the King the Writ was abated in Law. So note there, that the Outlawry was not holden void, but onely that the Exigent *Erronice emanavit*, and therefore notwithstanding that the Outlawry was reversed for the cause aforesaid, yet the Defendant was put to answer to the Felony, and so it is not like where a man is outlawed at the suit of a common person, in other Actions, as in an Action of Debt or Trespasse, for in such Case if the King dyeth, and another is King



if the party upon the Exigent sueth forth a Writ of Error and reverse the Outlawry, he shall not be put to answer, 7 H.7.5. Br. Coron. 143 and Outlawry 44. see.

*Where man shall plead in Nullo est erratum, & e contra, and where the Plea shall stoppe the party to assign any Diminution in the Record.*

**N**Ote that when an Error in fact or any thing which is no part or parcel of the Record is pleaded, there and in such Case to plead, that in *Nullo est erratum* is no Plea, and the reason is, because those matters are triable by the Country by Jury, but where Errors are assigned which are within the Record, and there is a Demurrer upon the sufficiency of the matter assigned, and a Confession of the Record to be such as is produced, there the party shall not after be admitted to alledge Diminution of the Record, because the same is quite contrary to what the party before hath admitted, vide 9 E.4.32.b.

*Mill 13 Jac.  
in B.R. Brook  
and Gregories  
Case.*

Note, it was holden in the Kings Bench by all the Iustices, that if the Defendant plead in *Nullo est erratum* that he shall not afterwards alledge diminution, because they are agreed that that is the Record, and the demurrer upon it is whether the matter alledged be Error or not, 7 E.4.25. Also it was holden by the Court, that a man cannot alledge Diminution of any thing which appeareth in the Record to be true.

In 28. H.6.10. In a Writ of Error upon a Judgement in Assise, the Plaintiff assigned his Errors and prayed a *Scire facias*, the Defendant appeared and pleaded in *Nullo erratum est*, and thereupon day was given untill another Term, at which day he appeared and assigned for Error, that it appeared in the Record that they were at issue upon severall matters pleaded out of the point of Assise, whereof the one was not enquired of, nor any thing found thereof in their verdict, and yet the Jurours had assessed damages for the whole. The Councell of the Defendant alledged Diminution of the Record, and prayed the Record might be certified; it was there holden, that the party could not alledge Diminution of the Records, because he had admitted the Record before, and after the *Scire facias* returned had pleaded, although it was objected that the parties might as well alledge Diminution in another Term, as the party might assign new Errors in another Term, but the opinion of the book is, that for as much as the Judgement and damages was given for the whole Land, whereas nothing was spoken of one Acre part of the Land, in the Verdict, that the same was Errour, and the Judgement was thereupon reversed, and there it was said by Danby, That if a *Præcipe quod reddat* be brought, if the Tenant plead two Pleas, and one of them is found for the Demandant

Demandant, and nothing is spoken of the other plea, if judgement be given for the whole, it is Error, and so in Assise, if the Assise be taken for part, it is erroneous for the whole, and the judgement was reversed, and so the alledging of Diminution was not allowed of, note Mr. Fitzherbert, in abridging of this Case, for which of the points the judgement was reversed.

A Writ of Error was brought in the Kings Bench of a judgement given in *Bristow*, and it vvas assigned for Error, That vvhwhereas it vvas commanded the officer of the Court to attach such an one to appear at the next Court, viz. *die Martis in Festo Sancti Edmundi &c.* vvhwhereas the said Feast vvas *die Mercurii*, so as no day vvas given to the party, the Defendant did alledge diminution of the Record, viz. that it vvas commanded the Officer that the party appear at the next Court, viz. *die Martis 16 die Julii anno quinto, nunc in Festo Sancti Edmundi &c.* so as these vvords *Sancti Edmundi* vvere void, and prayed a Certificate of the Record and diminution; In that Case it vvas holden by *Billing* and *Newton*, that a man cannot alledge diminution of a thing vvhich is contrary to the thing certified, but othervvise it is of a matter vvhich stands vvith that vvhich is certified, and that vvhich is alledged for diminution in the principall Case is not contrary to the Record vvhich is sent, but proves that parcell of the Record is left out, and there it is not sufficient, and afterwards the Plaintiff said, that the sixteenth day of *Julii, anno quinto Regis*, vvas *die Mercurii &c.*

Where a Writ of Error is sued in *London*, of an Error vvhich vvas in the Court before the Mayor, it shall be tried at *Saint Martins*, and then the Mayor and Aldermen shall have 40 dayes to advise upon the Record, and then the Recorder shall certifie it *ore tenus*: But *Quare* vvhether the party may alledge Diminution of a Record out of *London*, vvhich is certified by the Recorder *ore tenus*; for that vvas argued in the Exchequer P. 34. H. 6. 42. and divers opinions vvere there holden concerning the same.

Note, that it is holden, 11 H 4. 65. by the vvay, that a man shall not alledge Diminution of a Bill vvhich is sealed by the Iustices, because the same is not parcell of the Record, untill the Iustices have certified it, and so see 22 E. 4. 45. That after a *Scire facias ad audiendum Errores*, a man shall not alledge an Error in suit, or Diminution of the Record.

An Action upon the Case was brought upon an *Assumpsit* Error assigned was because that no place was limited where the payment should be made, the Originall was, that the promise was in consideration, that the Plaintiff did lend to the Defendant so much, he at *London* did promise to pay the same to him again, and in the Case there were two Originalls, which bore date the same day, and in that Case Judgement was given for the Plaintiff, and the Defendant brought a Writ of Error and alledged Diminution of the Originall, and then the other Originall was certified, the Defendant in the Writ of Error said, that the Originall upon which



which the Recovery was grounded, was an-Originall which had a place certain, and upon long debate of the Case, it was at last resolved by the Judges, that the same was the true Originall which did affirm the Judgement, and which did agree with the Proceedings, *vide* 18 *Jacobi*. *Trin.* 1623 *Bower & Jones* Case adjudged.

In *Hains* and *Cronches* case, *Tr.* 21 *Jac.* which was entred *M.* 19 *Jac.* 322. the Case was, *Haines* brought a Writ of Error against *Cronch*, to reverse a Record upon a judgement, which was given in the Common pleas; the Originall which was certified bore date, *Trin.* 18 *Jac.* and an *Ejectione firme* was brought, *Trin.* 18 *Jacobi*, for an Ejectment which was made in September following, and the same matter was assigned for error, and the party had a *Certiorare* to remove the Record upon which Diminution was alledged; for that the originall upon which judgement was given, bore date in September, which was after the ejectment. It was said by the Iustices, that the Originall is no parcell of record, but if error be assigned it must be assigned in the Diminution, for as the book in 6 *H.* 7 16. to alledge any thing against a record is void, and in that Case the ejectment being after the first originall it was holden that the same was well enough, and if two originalls be brought the Court shall intend the judgement to be given upon the originall which is warranted by the proceedings, and they shall judge thereupon, and the Judges shall not suppose an error.

*Hill.* 13 *Jacobi* in the Kings Bench, the Case was this, In a Replevin brought, the Defendant did avow the taking of the Cattell damage feasant, and upon issue joyned it was found for the plaintiff, in a three weeks Court holden at *Windsor*, the Defendant thereupon brought a Writ of error, and assigned for error, that the Entry of the plaint in the Court was the seventh day of *May*, and that the plaintiff afterwards did declare, there of taking of the Cattell the 25 of *May*, and whether the same was Error or no was the Question: It was objected that it was no Error, and the Book of 21 *E.* 4 66. was alledged to prove the same. But in this principal Case these 3 points were resolved by the Iustices. 1. Because that no plaint can be entred, but at a Court and the Entry of the plaint in this Case was Mesne betwixt the Court days, and so the Declaration was not warranted, there being no Custome alledged to maintain such an Entry, that the same was Error 2. It was resolved in this Case, that after in *Nulla erratum* is pleaded, that the Defendant cannot alledge diminution, because there is a perfect issue before, and 3. It was resolved that a man cannot alledge Diminution of any thing which appeareth in the record to be true, and because the Defendant in the principall Case did alledge diminution of the Record, and by the Record it was certified that the plaint was entred the 25 of *May*, the same was not good after issue joyned, and for these causes the judgement was reversed.

A man brought a Writ of Error to reverse a Iudgement given in the County Palatine of *Chester*, and the Writ of Error bore date before the

the Plaintiff was there entred, and whether the Record were thereby well removed, or not, was the Question, and it was resolved by the whole Court. *Mich. 1. Caroli.* in *Dale and Worthies* case in the Kings Bench, that the Record was not well removed by that writ of Error, because if there be not any plaint entred at the *Teste* of the Writ, how can the *Process* according to the words of the Writ be removed, when there is no *Process* entred, and that failing all fails, but in that Case it was agreed, that a Writ of error bearing date before the Judgement may be good, as the book in *1 E. 3. 4.* is, because that there the foundation stands good, and the usuall course of practice doth warrant the same.

*Where the Judges shall proceed notwithstanding a Writ of Error be brought upon the Judgement, where not.*

IN Debt brought, the plaintiff declared that he had recovered an annuity upon a Grant of the Predecessor, with a *nomine pene* within the Grant, if the annuity was not payed, and that he brought his Action for the *nomine pene*, and the Defendant did alledge that he had brought a Writ of Error upon the same Judgement, and notwithstanding the Judges did proceed, because it appeared by the Deed that he ought to have the *nomine pene* for the non payment of the annuity, *vide 4 H. 6. 31. acc.*

Debt was brought against executors, one of them appeared at the distress, and denied the Deed which was found against him, the Plaintiff prayed Execution, and a Writ of Error was brought, and upon that an *alias vel causam nobis significes*, and yet the Justices, especially *Stone* did award that Execution should be issued forth, *17 E. 3. 45. Fitz. Execution 76.*

In a *Scire facias* to execute a Fine, the Tenants cast into the Court a Writ of Error. And it was debated whether it should be allowed or not, because that Execution is awarded by the granting of the *Scire facias*, and yet at the last, the Writ of Error was allowed, for that thereby the hands of the Court were closed, and if they did proceed afterwards, it was to no purpose, *Vide 20 H. 6. 4. Fitzh. Execution 5. and Barre 27. acc.*

Erroneous Judgment was given in a Writ of annuity, and a *Scire facias* was brought to execute it, the Defendant would have pleaded Error which was in the first Judgement, and the opinion of the Court was, that he could not be admitted so to do, but that he was put to his Writ of Error upon the Originall Judgement, for the Judgement being in force the Court ought to award execution, *11 H. 4. 4. & 47.*

In Detinue of a Statute, the Plaintiff recovered the Statute, the Defendant brought a writ of Error, and depending that, the first plaintiff issued forth Execution upon the Statute, and the body of the defendant



was taken in Execution, the opinion of the Court was, that he could not be discharged out of execution, although the execution was sued forth pendant the Writ of Error, for it was his folly that he sued not forth a *Superfedeas* to the Execution, but the opinion of the Court was, that after the Writ of Error is sued forth and allowed, Execution cannot be awarded upon the first Judgement, because by the Writ of Error the Record also is removed, and then the Court can do nothing, 7 H. 6. 42.

In Trespasse the plaintiff recovered, the Defendant sued forth a Writ of Error returnable, *Mense Mich.* and afterwards sued forth another Writ of Error returnable, 15 *Martini* the same Term, and because the same did sound to be in delay of the party, therefore the Judges awarded Execution, but it was there said, that the surest course is to sue forth a *Superfedeas* to stay the Execution out of the Kings Bench, and *Brook* in a bridging of the Case made a wonder that the hands of the Judges were not closed by the acceptance of the Writ of Error, 19 H. 6. 7. b.

In Detinue the Plaintiff had a Verdict for him for the thing demanded, and 40 s. damages, if the thing might be obtained, if not, then 20 l. damages for the whole, and a *Distingas* issued forth for to deliver the thing demanded returnable, *Octab. Hillarii*, and at the day the Sheriff returned issues, and the Defendant appeared not, nor did deliver the thing, and after the fourth day from *Octabis* came a Writ of error, and the Plaintiff prayed judgment and execution of the 20 l. and to have the same entered upon the fourth day, which was before the Writ of error was brought, but he could not obtain it, for that by the coming of the writ of error, the hands of the Court were closed, 22 H. 6. 41. b. acc.

An information was in the Exchequer against the Merchants of the *Stillyard* and judgement was given against them, and they brought a writ of Error and a *Superfedeas* to stay the execution, and the Kings Attorney prayed execution but could not obtain it, for the bringing of the Writ of error was a *Superfedeas* in it self, 1 H. 7. 15. and 16. acc.

A man brought a Writ of error with a *Scire facias ad audiendum errores*, and the Defendant appeared, and afterwards the Plaintiff made default, and the Defendant sued a *Scire facias* to have execution of the judgment against the plaintiff, and the defendant in that *Scire facias* who was plaintiff in the writ of error, made default again, whereupon execution was awarded, and a *Capias ad satisfaciendum* issued, and thereupon the defendant brought a new writ of error, and prayed a *Superfedeas* to the Sheriff, that whereas he was arrested by the *Capias ad satisfaciendum*, that he might deliver him out of execution, and the opinion of the Court was, that the *Superfedeas* was not to be allowed where the party is once in execution, and especially in that Case, because the party had made severall defaults both in the *Scire facias* brought by himself, and also in the *Scire facias* which was brought against him; for if the *Superfedeas* to the execution should be allowed, then the party might in another Action brought against him plead, that the plaintiff had once executi-

on against him, and it was also said, that execution lawfully once had shall not be avoided, because it is the effect of the whole matter, and Action, but it was agreed, that if execution had not been executed, and the party had not been taken, that then the bringing of the new writ of error, and of the *Superfedeas* for the staying of execution upon the Judgment had been well brought, 2 H.7.12.a. & b.

A woman brought a writ of Dower and recovered, and upon a suggestion made, that the husband died seised, a writ of *Enquire of Damages* issued forth, and before the Return thereof a writ of error was brought; In this case there were two points debated Pasch. 17 Car. in the Kings Bench in *Stewards Case*, the first was whether a writ of error would lie before the writ of *Enquire of Damages* was returned or not, and it was resolved that the writ of error was well brought and would lie, because the Dower in judgment is *quod recuperet*, which judgement doth determine the Originall, and damages are onely by the Statute of *Merton*, which doth not alter the judgment, and although it was objected that then the damages should be lost. It was holden that the damages were not lost, for that after the record removed into the Kings Bench, the Judges there might award a writ of *Enquire of damages*. 2. It was resolved in that Case, that the writ of error it self was a *Superfedeas* to the writ of *Enquire of damages*.

A writ of error was brought to reverse a judgment given in *Ireland*, if a transcript be made of the record, although the record it self be not brought over for fear of losing of the same by water, yet it was resolved by the Court of Kings Bench, *Pl. 5 Car.* that the very being of the writ of Error was a *Superfedeas* to the execution of the said judgement.

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*Where the whole Record shall be removed and where not, where the Originall, where not; and where another Record shall be removed with it.*

**V**Pon a Writ of error sued, the record it self shall be removed, and not the transcript of the record, for upon a transcript of a record a man shall not assign error, if it be not upon a Writ of Error, sued upon a transcript of a Fine, for the error may be assigned upon the Transcript of the Note of the Fine, *F.N.B.* 20 f.

He in the remainder brought a *Scire facias* to execute a Fine, and upon the default of Tenant for life, one prayed to be received, and was, and died, his heir prayed to be received being within age, with the advantage of his age, and in error brought upon the proceedings in this suit exception was taken, because that the record of the Fine was not removed, and the exception disallowed; for notwithstanding the *Scire facias* brought and the remover by error, he in the remainder may have a

*Scire*



*Scire facias* in the Common pleas, or sue Execution here at his election if it be not found for him. Also it was sayd by *Green*, That if a man bring a *Formedon* in the Remainder, the Deed shall be entred upon Record, and in Error brought shall be removed as parcell of the Record. And note, That it is there sayd, that the Originall shall not be removed upon error brought upon the body of the Record, contrary (as appeareth 9 H. 6.) if error be assigned in the Originall, no more shall a Writ judiciall, or the Record of the Essoin, for that these remain with the Clarks, 20 E. 3. Error. 2. 24 E. 3. 24. Br. Error 86. acc. But in an Affise the whole Record shall be removed.

In an Affise of Darrein presentment, the parties did demur, and it was found for the Plaintiff, and he had a writ to enquire of the damages, and mean betwixt that and the *Nisi prius*, a Writ of Error was brought, and the matter was returned, that the Justices had not the whole Record, and yet so much of the Record as was before them was removed, and it was holden that they might redresse the errors in the principall Record, as in cosinage, or *Quare impedit*, if one recover by default, yet the damages shall be enquired of: but if a Writ of Error be brought, nothing shall be removed but only the principall part of the Record, vi. 17 E. 3. 5. & 19. Fitzh. Error 71.

Upon Error in ancient demesne, the Originall and the whole Record, shall be removed, by *Knivit*, in 34 Aff. 7. And by the same reason, it be removed out of the common pleas into the Kings Bench. So it is of error before Justices of Affise, but Ireland shall not send the originall, but only the transcript of the Record, vi. 5. E. 2. Fitzh. Error 89. acc.

If Error be sued in Parliament out of the Kings Bench, the Record shall still remain with the Justices, and the same may be brought in Parliament by the hands of one of the Judges of the Kings Bench, or a transcript of it, vi. 8. H. 5. Error 88.

A Writ of Error was brought in the Kings Bench upon a recovery had in an Affise, and the Judgment there affirmed. Afterwards the party brought a Writ of error in Parliament, upon the Judgment had in the Kings Bench: and the cheif Justice brought the Record in Parliament, and also a Transcript of it, and after the same was examined there, the same was sent back into the Kings Bench, and the transcript only remained with them in Parliament, upon which a *Scire facias* was awarded, vi. 23. Eliz. Dyer, 375.

In a Writ of Entry of land and rent, as to the Land, the parties were at issue, and it was found for the Demandant, and for the Rent the Plea did depend, and a *Scire facias* was awarded for the land, and the Sheriff returned *Scire feci*, And it was holden, that as to the land, the party might have execution, notwithstanding that the other the rent did depend, for that the one was not consistent upon the other, and in such case, the party may have a writ of Error thereupon, and shall have the Record of the Court, and of the plea removed, as in debt upon an obligation and contract, by

severall Counts, and so it is in the like cases, where there are severall Principles in one Writ or severall Counts, by *Prisor*; but where there is but one Writ or one Count, there it is otherwise, for they cannot have the Record in the Kings Bench, and wee have also, and therefore *77. 342* sayd, That if the party would bring a speciall Writ of Error, they would be advised upon the view of it, and if there was cause then allow of it, *36 H. 6. Fieri facias*, 3. But in a *Quare impedit* brought against diverse persons, who plead severall issues, and one is found for the plaintiff, the Defendant shall not have a Writ of Error thereupon, until the other issues be tried, *34 H. 6. 40* in the Lord *Chenowells* case. And thus *383* A Fine was levied the last Term, and the party did suggest, that hee then was, and yet is within age, and prayed a Writ to the Justices of the Common pleas, to send the transcript of the note into the Chancery; and afterwards it came into the Kings Bench, and the party assigned Errors, and prayed a *Scire facias* *ad audiendum errores*, and it was doubted whether they might award a *Scire facias* upon the Transcript, to reverse it: But a *Scire facias*, to execute a Fine upon the Transcript they may award. And yet at last, because the Fine it self shall not be removed, because that a *Quid juris clamor* ought to be awarded before it shall be ingrossed, and if it should be removed, then it should never be ingrossed, therefore the Writ was awarded good, and by *Parry*, when the plea is come to that point, that the note shall be reversed, then we may send for the Note. *204. 201. 16. E. 3. Fieri facias*, 30. Record 33. And if it be affirmed, then nothing shall be done here, but the Process shall continue in the Common pleas, *vi. 21. E. 3.*

24. *Fieri facias* Error 76. *laac* In an Assise, it was found that the Defendant did disseise the Plaintiff with force, for which he recovered damages, so have execution of the damages, the whole Record was recovered into the Common pleas, and when the Record was there within the year, a *Capias pro fine* was awarded for the King, and the party was taken and put into the Fleet, and the Plaintiff prayed that he might remain in execution for the Plaintiffs damages, and it was adjudged that he could not be in Execution for the party, but the plaintiff was put to his *Scire facias*, and there it was sayd by *Freewick*, that if a Record of the Common pleas be removed into the Kings Bench by Error, and afterwards judgement is affirmed within the year, yet the party who recovered shall not have Execution by *Fieri facias*, nor *Capias*, nor *Elegit*, but must sue out a *Scire facias*, because it is in another Court than where the Judgment was given, *15 H. 7. 31*

to the examination of the errors, and it was holden that they might not proceed to the examination of the errors, for that it would be inconvenient before the plea of the Tenant was tried, for he might plead something which might bar the Plaintiff of his action, and also if the parties were parties were of divers parties, and the Defendant might allege something to the record and would not, the Justices should then assigne the errors

Bbb

When



*When the Justices shall proceed to the Examination of the Errors*

If he in the Reversion bringeth a Writ of Error, the Justices shall proceed to the Examination of the Errors during the life of the Tenant for life, 20 E. 3. Fitzh. Error 21.

A Writ of Error was brought against the Heir, being Tenant for life of the moyety of the Land, and a *Scire facias* against a stranger of the other Moyety, and the heir being in ward of the King, and within age, prayed his age and had it, and yet the Justices did go to the Examination of the Errors as to the stranger, and so it seems to be, if Error be assigned in the Writ, 9 H. 6. 46. and 19 H. 6. 29. in the Lord Dudley's case.

In a Writ of Error when the Record cometh into the Court, the Plaintiff hath all that Terme to assign his Errors, yet if he doth not sue forth a *Scire facias ad audiendum Errores* against the Defendant within return thereof the next Term, the whole matter is discontinued, 20 N. B. 20. g. acc.

Error was brought against one, who by the Writ was supposed to be dead, for which cause a *Scire facias* issued against the Heir and Tenants, and the Sheriff returned, that the heir had nothing by which he might be warned, and the Tenants did appear, and whether they should proceed to the Examination of the Errors, untill the heir came and appeared, because it might be, that he had a Release to plead, no the doubt, and at last, forasmuch as they did shew, that their possession was by a feoffment, and not by wrong, it was awarded that a *Scire facias* should issue forth against the heir at the suit of the feoffees before they proceeded to the examination of the Errors, but contrariwise it had been if they had entred by abatement, for then they should not take advantage of a Release made to the heir, 21. 8. H. 4. 18. acc.

If the Plaintiff appear upon the *Scire facias ad assignandum Errores*, there the Court shall proceed to the examination of the Errors, but if he make default, the Defendant shall have Execution, for the Court is not to examine the errors although they be apparent, but at the assignation of the Plaintiff as it is agreed, 20 H. 6. 18.

In a Writ of error, one *Scire facias* was sued forth against the party, and another against him who was Tenant, returnable at a certain day, at which day the parties appeared, and the Tenant pleaded Joynancy with another, the Plaintiff prayed that the Court would proceed to the examination of the errors, and it was holden that they might not proceed to the Examination of the errors, for that it would be inconvenient before the plea of the Tenant were tried, for he might plead something which might bar the Plaintiff of his Action, and also if the Plaintiff and he who were parties were of kin betwixt them, and the Plaintiff will assigne error, and the Defendant might alledge diminution of the Record and would not, the Justices should then adjudge that for error,

error; then the Tenant should be at a great mischeif, and therefore it was declared by them that they would not proceed to the examination of the errors till the Tenants Plea was tryed, 30 H.6.2. b.

In 21 H.6.34. by *Paston*, If one bring a Writ of error in the Kings Bench, to reverse a judgment given in the Common Pleas, and hath a *Scire facias* against the Defendant, *Ad audiendum Errores*, such a day, at which day the Defendant appears, and the Plaintiff makes default, the Defendant shall have execution without answering to the errors afterwards assigned, but if the Plaintiff be non-suit before he bring the *Scire facias*, and then the Defendant sueth the *Scire facias* to have the execution of the Judgment, there the Plaintiff may assigne errors, and the Defendant must answer the errors.

In a false judgment against an Abbot, the Plaintiff was non-suit, and the Abbot had a *Scire facias* against the Plaintiff, to shew cause why he should not have execution returnable, 15 Pasch. at which day the Plaintiff appeared and assigned errors, and tendered Surety to sue with effect, and prayed a *Scire facias* against the Abbot, *Ad audiendum errores*, the opinion of the Court was, that he might assign the errors against him without a *Scire facias*, because they had day by the Roll. *Quere*, whether there be a difference betwixt false judgment and a Writ of error. And note, That the opinion is H.23 H.6. That if the Plaintiff in false judgment be non-suit, the other party may presently sue forth execution without a *Scire facias*.

If in a *Scire facias ad audiendum errores*, the Defendant do make default, the Justices may proceed to examine the errors, as appeareth by the book, in 14 H.7.33. but there the case was, That the Husband and Wife brought an Action of Debt against H. who was outlawed, and he brought a writ of error in the Kings Bench, to reverse the Outlawry, and had a *Scire facias ad audiendum errores* against the husband and wife, and the Sheriff returned the husband dead, and that the wife was married, who did not appear, it was moved that the Judges might proceed to the examination of the errors, for the husband being dead, no *Scire facias* could issue forth against his Executors, and when the wife is summoned and doth not appear, there is no reason that the party should be vexed for her not appearance. But by *Fromick*, Justice, the Writ of error shall abate, and the party put to sue a better Writ, vi. 14 H.7.33. ac.

*Cheny* levied a fine, and afterwards brought a Writ of error to reverse it: And for error assigned, that he was within age at the time of the fine levied, and had a *Scire facias* against the Conusee, *Ad audiendum errores*, and upon two *Nichells* returned, the Court did proceed, and by witnesses and inspection did reverse the fine, 3 Eliz.Dyer 201.

Grandfather, Father, and two Daughters, the Grand-Father levied a Fine Come ceo, &c. of Lands in *Chaster*, with a Remainder to himself for life, the Remainder to the Father and his heirs males, the remainder to the el-



eldest daughter in rale; the remainder over, the Grand-Father dyed, the Father dyed without issue male, the eldest daughter entered, the youngest daughter in her own name, and in the name of her sister, as co-heiress to the Grand-father, brought a Writ of Error returnable in the Kings Bench to reverse the fine (directed to the Justices, and not *erroro Cestrum quod nota*) which was returned with the Record, and a *Scire facias* issued forth against the heir of the Conusee, *Ad audiendum errores*, who had nothing in the Lands, and none against the Ter-Tenant, the eldest daughter not appearing, shee was summoned and severed. In this case it was holden,

First, That the Writ of Error was well brought here in the Kings Bench, for that Errors are excepted in their Charters of *Chester*.

Secondly, It was holden that the Plaintiff might have had a *Scire facias* against the Ter-Tenant, for otherwise if he have Judgement that he be restored to the Land, he cannot have execution; for if the Tenant be put out without summons, he may have an Affise, and it may be that he hath a release to plead, which shal ease the Court from examination of the errors, and thereupon a *Scire facias* was awarded against the eldest Sister, as Ter-Tenant, and afterwards the heir of the Conusee did plead to the errors *in nullo erratum est*, and the Ter-Tenant was summoned *Ad audiendum errores*, vi. 14 *Eliz. Dyer*, 220. 221.

Three men recovered in an Affise against B. and others, B. and the other brought a Writ of Errour in the Kings Bench, and pendant the Writ, one of the Plaintiffs in the Writ of Error dyed, and the Court not knowing of his death, proceeded to Examination of the Errors, and did reverse the Judgement: And afterwards the Plaintiffs in the Affise brought a Writ of Error in the Kings Bench, two questions were moved in that case.

First, If a Writ of Error did lye upon a Writ of Error in the same Court, before the same Justices.

Secondly, If one of the Plaintiffs dye pendant the Writ, if the whole Writ should abate. It was said in that case that the Writ was well brought and that it did not abate, because the Writ of Error was in effect but in the nature of a *Certiorare*, for by the Writ, the Judges of the Kings Bench had only a speciall authority to proceed to the examination of the Errors, and so it was adjudged. vi. 3 *R. 3. 1.* and 2 *R. 3. 20.* in a *Scire facias*.

It was holden by Sate Justice, *Mich 28 and 29 Eliz.* in *Bilford and Diddingtons* case, that if a Record be once before the Justices, and Errors therein be assigned, the Justices may proceed to examine the errors, although no Writ be brought. But *Clench* Justice held, that there ought to be a Writ of Error before any judgement can be given to reverse the Errors in the first Record.

A *Scire facias* was brought by an Infant to reverse a fine by him levied within age, a protection was shewed forth for the King, *De servitio Regis*, yet because the protection might be continued from year to year, and the Plaintiff during that time might come of age and so might be barred

barred by his Fine, the Court adjudged that they might proceed to examine the Errors notwithstanding the protection, 21 E. 3. 28. ac.

In the Case which was P. 15 Car. in the Kings betwixt the Earl of Oxford and Waterhouse, in a Writ of Error to reverse a Fine, the Plaintiff for Error alledged, that at the time of the Fine levied he was beyond the Seas, the Defendant alledged that he came into England within the five years, the Judges proceed to examine the Errors, and being at issue whether he came into England within the five years or not, the Jury found that he came over in July and not in August, which was the time in the issue joyned, yet the Court was clear of opinion that the Fine could not be reversed upon that Writ of Error, for although the Jury found that he came over in July, yet the substance of the matter was, whether he was in England so as he might have made his claim, or reversed the Fine for some other cause, and therefore in that case it was adjudged that the Fine should bar him.

*Who shall have and maintain a Writ of Error, and who not: and against whom the Writ doth lie.*

**N**One shall surmise Error, or have a Writ of Error but he who is party or privy to the judgement or estate, 21 H. 6. 29. b. 22 E. 4. 31. 32.

Of Error in the Record, none shall have advantage but the party or his heirs, 9 E. 4. 14. b.

If the Tenant in a Formedon vouch one, and he voucheth over, and so there be six or seven vouchers, every one of the vouchers shall have a writ of Error upon the Judgment given against the Tenant, because every one of them shall recover in value, by *Vavasour*, but the reason of that Case is given by *Bryan*, because they are privy, for they come in by course of Law, but if in a Formedon the Tenant make defence, and the Demandant saith, that before the Tenant any thing in the Land, that one A. was seised and enfeoffed the Tenant with warranty and prayeth that he be summoned, if in that Case Judgement be given against the Tenant, and the Tenant have Judgment over, the Tenant shall not have a writ of Error for the Errors which was betwixt the demandant and the vouchée, for the vouchée doth not come in by course of Law, and the Tenant was not privy, 22 E. 4. 32. a.

*Piers* of S. brought an attaint against S. de R. upon a Verdict which passed upon a writ of Entry *sur disseisin* betwixt the said *Piers* de S. and S. de R. in which Writ of Entry S. did answer as Tenant, and yet notwithstanding because that S. was not Tenant the day of the Attaint brought, nor never after, the writ of attaint did abate, and yet the attaint was freshly brought within half a year after the Judgement in the first.



first writ 6 *Ass. plea* 6. and the reason of that Case is given by Finch in his *N.B.* 107. k. because the Attaint is maintainable onely against the Tenant of the Land wth out naming him vvho vvvas party to the Record, and in that Case he vvvas not the Tenant, but in that Case it is agreed, that a writ of Error is good against him vvho vvvas Tenant of the Land at the time of the Judgment, although at the time of the writ brought, he had nothing in the Tenancy, vide 6 *Ass.* 6. 14. *Ass.* 2. *Br.* Attaint 59.

If a man hath issue two sons, and the eldest entred into Religion, and the father dieth, and a Recoverie is had against the younger Son of the Land by erroneous Judgment, and afterwards the eldest Son is damaged, the eldest Son shall not have a writ of Error upon the Recovery, but in that Case the younger Son shall have the writ of error, because he is party and privy to the Recovery, and vvhen he hath recovered and reversed the Judgment, the eldest Son may enter upon him, 9 *H.* 7. 24. *Br.* Error 154 *F.N.B.* 21. *L.* but *Quare* for Hill 18 *Eliz.* in *Hemmings* Case, the speciall heir shall have the writ of Error against the opinion of 9 *H.* 7. 24. vide 1 *Eliz.* *Dyer* 90. *Plow.* *Cogitat.* 24. acc. that the heir at law shall have the writ.

3. *H.* 4. 19. The daughter speciall heir to the estate tail shall have the Writ of Error, although there be a son who is heir at the Common Law, against the opinion of *Fortescue*, 22 *H.* 6. 23. that the heir at the Common Law shall have Attaint and Error.

The Bailiff cannot have a writ of Error upon a judgement given against the principall, because he was not privy to the Judgment, but he shall have allowance thereof by way of Plea, in a *Scire facias* brought.

In an *Assumpsit* Judgment was given against the Principal in the Kings Bench, and after a *Scire facias* against the Bail, afterwards they both joyn in a writ of Error, and it was adjudged that the VVrit of Error shall abate, because they could not joyn, and then it was defined that the Bail might have a new writ of Error by himself upon the Record *coram vobis residet*, which was done as well because a *Scire facias* is not an action in which a Writ of Error is given in the Exchequer chamber; and also because the Record shall remain in the Kings Bench, and not before them, *Forrest* and Sir *James Sandlands* Case, *Hob. Reports* 84. yet it was said, that it had been ruled in one *Matthews* Case, that such a Writ of Error had lien for the Bail.

If erroneous Judgment be given against Tenant for life, he in the Reversion after the death of Tenant for life shall have a Writ of Error and reverse the Judgment, vide 4. *Ma.* *Dyer* 1. and see 20 *E.* 3. temp. *Error* 2. he shall have Error during the life of Tenant for life, 8 *H.* 56. acc.

If the Demandant in a Formedon be barred by Verdict or demurrer, his Issue may have a new Writ of Formedon, and so if he be barred in a Writ of Error upon a Release of his Ancestor, his Issue shall have a new

Writ of Error, for he claims in not onely as heir, but *per formam Dan.* and by the Statute of *Westminster 2. cap. 2.* and shall not be barred by faint *facte* or pleading of his ancestor, *C. 6 part 7. in Ferrers Case.*

*Sir Ralph Rowlet* being Tenant in Tail with the remainder over suffered a Recovery to the use of *Sir Nicholas Bacon*, and to avoid Error did release all Errors, and afterwards brought a Writ of Error, and was barred by the Release, but it was adjudged that the same did not bar the Issue in Tail of his Writ of Error, for that the Right of the Tail was not destroyed and in that case it was holden, that if the issue in Tail fail, that he in the remainder by the Statute of *9 R. 2. cap. 1.* might maintain a Writ of Error, although he was not party to the Record, *3. Eliz. Dyer 188.*

If pendant the Writ of Error, the Tenant do convey the Land unto another in Fee, yet if erroneous Judgment be given, a Writ of Error lyeth by the Feoffor, because the Demandant is estopped to say, that the Tenant did alien the Land, pendant the Writ, because the Tenant as to the Demandant was Tenant, and if the Demandant doth recover by erroneous Judgement, if after the Feoffor doth enfeof the Demandant, *2. Error* in that Case whether the Tenant shall have a Writ of Error, *20 Aff. 2.*

The Tenant brought a writ of Error in the name of the heir, and not in his own name, *Kellaway 193.*

If a man be bounden in a Recognizance, Statute Merchant or Staple, and maketh a Feoffment in Fee and Execution be sued, if there be Error in the Execution the Feoffee shall have a Writ of Error, and not the Recognizor, for the Feoffment made after the Recognizance is good, and he is the party who is grieved, for the Lands are extended in his hands, and if the Feoffee should not have a writ of Error the Law were defective, and he without remedie, for the Recognizor cannot not have Error, because the Land is not extended in his hands, and it is not like where a recovery is had against one, or an Action is brought against one, and pendant the writ or after the Recovery he maketh a Feoffment for three, if there be Error the Feoffee shall not reverse the Judgment and recoverie, for that the Feoffment pendant the writ, or after was not good, *17 Aff. 24. see Error 71. vide 18 E. 3. 25. b. acc.* he who is the party grieved shall have the writ of Error, although he be a stranger to the judgement.

If Erroneous judgment be given against a Bastard, and he dieth without Issue, no body shall maintain Error, *15 Aff. 8. by Pole.*

*17 Aff.* If the Iustices award Execution upon a Statute Merchant or Staple, and the Sheriff extendeth the Land, and doth not return it, an Issue lyeth against the Sheriff, and the party may sue forth a new Execution.

The Successour of an Abbot, Prior, or Parson, or the like Corporations, shall have a writ of Error of a judgment given against their Predecessors.



detectors for such things as touch the Succession or Corporation, *And by Pollard*, the Patron may have Error although he was not present in aide of. *And vi. Fitz. Error* 72. in a *Quare impedit* brought by the Patron and Incumbent, and Iudgement was given only against the Patron, the Parson brought a VVrit of Error, but the reason was because he was party to the VVrit, though he were not party to the Iudgement, but if he had not bin party to the VVrit he could not have had Error, as in Attaint, if he be not privy to the VVrit he shall not have Attaint, 44 E. 3. 6. and 7.

If a *Precipe quod reddat* be brought against one, and pendante the VVrit he make a Feoffment in fee to another, and afterwards erroneous Iudgement is given against him, he shall have a VVrit of Error against his own Feoffment, for that the Error is Collateral to the tytle of the Land, *1. Part in Albanies Case* 12. *Aff. 41 acc.*

Execution was sued forth upon a Statute before the time sought to have bin sued, and the Feoffee of the Land brought a VVrit of Error to reverse the Execution. It was objected, that the VVrit of Error did not lye because he was not party nor privie to the Record, yet because he was the principal who was grieved by the Execution, it was adjudged that the VVrit did lye, 18 E. 3. 25. b.

In 34. *Eliz.* in the Kings Bench, the case betwixt *Sherrington* and *Walsy* was this, *Sherrington* did recover in an Action of Debt against *Walsy*, who aliened the Land to one *Charnock*. Afterwards an *Elegit* was made upon the Roll, *Charnock* brought a VVrit of Error to reverse the Execution, it was objected that VVrit did not lye, 1. because he was a stranger to the Record, 2. because he came in, under, and after the record of Error, yet notwithstanding the VVrit was admitted good, and he was forced to plead to it, for that *Charnock* was the Party which was grieved by the Execution.

If an *Exigent* be awarded erroneously against the Testator, it stands in force until it be reversed, and the Party shall forfeit his goods. But the Executors or Administrators, after the death of the Party, may have a VVrit of Error reciting all the special matter, and reverse the Outlawrie, but a general writ of Error they cannot have, 34 *Eliz.* in *B. Radford* *acc.* But if a man be outlawed in case of Felony there the Executors cannot reverse the Attainder for Error, and so restore the blood by *Dubridge* and *Jones* Iustices in 3. *Car.* in the Kings Bench, where the Case was That *W. Isley* was seised in Fee of the Mannor of *Sandridge* in the County of *Kent*, and had issue *Henry Isley*, who was indicted of Robbery, 18. of *Eliz.* and 19. of *Eliz.* the Record of the Indictment was brought into the Kings Bench. And thereupon 20. *Eliz.* *Henry Isley* was outlawed, *William Isley* dyed seised, and *Henry Isley* entred into the Land as Son and heir, and being thereof seised, devised the same to *J. S.* in Fee, who conveyed the Land to one *Brooker*. *Brooker* brought a VVrit of Error to reverse the Outlawrie of *Henry Isley*. And it was adjudged *Trin. 3. Car.*

**Kings Bench.** That *Brooker* the Purchasor could not reverse the Outlawrie, and restore the blood by the VVrit of Error.

Executors or Administrators shall have a Writ of Error upon a Judgement, given against their Testator for Debt, or Damages, *F. N. B.* 21. *M.*

Husband and Wife joynt tenants of a Mannor, and to the heirs of the body of the Husband, the Remainder to be in tail. A Recovery is had in a Writ of Entre in the Post, against the Husband only in the life of the Wife, with voucher. *B.* in the Remainder is attainted of Treason, and executed, and afterwards it is enacted by Parliament, that he shall forfeit all such Mannors, Lands, Rights, &c. which he had or ought to have in fee or in tail in use, or possession from the day of the Treason committed. Afterwards the Husband dyed without issue, and then the Wife dyed, the Queen granted to *G.* the Son of *B.* and to him restored the Mannor which she had by the Attainder. And afterwards the Queen brought a Writ of Error against the heir of the Survivor, Recoveror to reverse the Recovery, and in this case diverse points were resolved by the Justices. 1. That the Writ of Error was not given to the Queen by any words in the Act of Attainder, because the ter-Tenant was in by tytle, and the entrie of the person attainted was not congeable, and a rule was then taken, that such a Right for which the party had not any remedy, but by Action to recover the Land, could not escheat or be forfeit at the Common Law, and by the general Act of Attainder Rights of Action were not given to the Queen. 2. That the Writ of Error being a bare Action with consists more in privy then an Action which is accompayned with a Right was not given to the Queen by the general words of the Act. 3. That he in the Remainder expectant upon an estate in tail after the Statute of *Donis* might have a Writ of Error as an incident, Jurestie given unto him according to the Rule of the Common Law. 4. That upon the Statute of *9 R. 2. cap. 3.* he in the Reversion or Remainder upon an estate tail should not have a VVrit of Error, for he is out of the Intention of the Act, because an estate in tail may be possibility continue for ever. 5. That by the general grant of the Mannor, and of all interest claimed and demand therein, a Writ of Error will not passe, but if it will passe at all it must passe by expresse words of VVrit of Error see 3. Part the Marquis of Winchesters Case.

In Debt brought by *Quominus* in the Exchequer, the Plaintiff makes a *Retrahit* in proper person: *viz. Fateatur se in Curia hic ulterius nolle prosecute*, but no Amercement is set upon the Plaintiff, and Judgement is given that the Defendant eat *sine die*, which is Error. Yet the Plaintiff may have a VVrit of Error, and reverse the Judgement for no imperfection, is saved in such Case by any Statute when Judgement is given upon *Retrahit*, but if in any Action brought the Tenant do disclaim, he shall not have a VVrit of Error against his Disclaymer, for by his Disclaymer he hath barred himself of his Right to the Land, against which he



cannot have a VVrit of Error to have Restitution. *W.C.8. part. 1. Case. 6 E. 3. 7. F.N.B. 22. acc.*

A *Fieri facias* issued forth against the Defendant who dyed, and afterwards the Sheriff levied the Execution against his Administrators, and the Administrators brought a VVrit of Error to reverse the Judgement. *6. Dyer 76. Vincent's Case.*

A VVrit of Error doth not lye against a Stranger to the Judgement, a VVrit of false Judgement doth, without naming him who was Tenant and party to the Judgement. But in a VVrit of Error he ought to name him who was Party to the Judgement, whether he be Tenant to the Land or not. *F.N.B. 81. and 107 R. A.* VVrit of Error must be sued forth against him who was party, or his heir, or Executors, if the same be in a personal Action, otherwise the VVrit shall abate.

*In what Court A Writ of Error shall be brought, and to whom it shall be directed, and the manner how.*

**E**rror in Process in the Kings Bench, or for the default of the Clerk may be reversed in the same Court by a Writ of Error before the next sittings. Also in the common Pleas after Judgement given, the Judges there may reverse their Judgement the same Term for the like Error. But Errors in matters of Law must be reversed in other Courts, and before other Judges, *Vi. 1 E. 4. 41. 7 H. 6. 28. in Hydebrans Case. 2 R. 3. 1. in Dyer Case. 19 H. 6. 2. 15 E. 4. 7. and 8. acc.*

Errors in Chauncery shall be reversed in Parliament. But the same to be understood where the plea is holden there in the Petty Bagg, which is a Court of Law, where the partie hath priviledge, for upon matter of *Sub-pena*, no Writ of Error lyeth, *37 H. 6. 13.*

A *Scire facias* was in Chancery to have execution of a Recognizance, the Defendant pleaded a Deseazance which was dated before the Recognizance, but delivered after, which was not received but Execution awarded, for which cause the Plaintiff brought a Writ of Error in the Kings Bench, and reversed the Judgement. Note, Both Courts are *Coram Rege*, *14. Eliz. Dyer 315.*

False Judgement given in Wales shall be reversed before the Justices there, but if there be no Justices there, then it shall be reversed in the Kings Bench. But by *Fortescue* and others it shall be reversed in Parliament, *19 H. 6. 12.*

Note by *Needham*, if a Writ of Error be directed to the Justices of the *Assize*, in such Case, the Justices shall have day within which 3. Counties shall

be determined to reverse or affirm the Iudgement, and if they will reverse it, the Record shall never be sent into the Kings Bench nor else where, but the Iustices of *Chester* shall give Iudgement. But if they will affirm it, then the Record shall be sent from thence into the Kings Bench, and if it shall be reversed there, they shall pay 100 l. 34 H. 6. 42.

It is holden in 3 E. 2. Fitz. Error 89. That no Writ of Error shall be brought here of a Iudgement given in *Ireland*, if not upon the default of the Iustices of the Kings Bench in *Ireland*: and note, that there it is said, that there is no Original here, but the same remains there, and therewith agreeth 37. Aff. 3. Fitz. Affise 328.

Upon a Record removed by a Writ of Error out of a County Palatine, Execution shall be awarded in *Banco* by *Finex*, Vide 21 H. 7. 35. b.

In 21 H. 7. 31. It is said, that many VVrits of Error were sued here in the Kings Bench, of Iudgements had and given in *Callis*, although it was said by *Bastor*, that their proceedings there were by the Civil Law. But see after 21 H. 7. 33. Pl. 33. by *Bruduel*. If erroneous Iudgment be given in a County Palatine, it shall be reformed by VVrit of Error, or false Iudgement here. But if a Iudgement be given in *Wales*, or in *Callis*, it cannot be reversed here, because those were never parcel of the Crown, but County Palatines were parcel of the Crown, and afterwards were exempted, 21 H. 7. 33. b.

A VVrit of Error lyeth upon a Iudgement given in *Ireland* in the Kings Bench in *England*, 2 R. 3. 14. in the Merchants of *Waterford*s Case, N. B. 22. d. acc.

A VVrit of Error was brought in the common Pleas upon a judgement given before the Iustices of Assise in the County of *Monmouth*, the Defendant did demurr to the Iurisdiction of the Court to hold Plea of Error upon a Iudgement in Assise *Coram Iusticiari. per literas patentes*. And by all the Iustices, the Writ of Error did not lye, 8 Eliz. Dyer 350.

If Erroneous Iudgement be given in the Courts before the Sheriffs in *London*, the Writ of Error must be directed out of the Chancery to the Mayor and to the Sheriffs (although the Iudgement be given in the Sheriffs Court to remove the Record into the *Hustings* of *London*, which is a Court holden before the Mayor) and there the Record shall be examined, and if there be Error in it, they shall reverse the Record by the Custome of the City, F. N. B. 22. H. 23. b. And when Error is sued upon a judgement given before the Mayor in the *Hustings*, it shall be at *St Martins le grand* in *London* by Commission, and there the Mayor and Aldermen shall have day by 48. dayes to be advised of their Record, and then the Recorder shall record it *ore tenus*, 34 H. 6. 42.

It may be outlawed in Debt, or other personal Action, and brings a VVrit of Error, by which the Record is removed, and then he purchaseth his pardon, and hath a *Scire facias*, the Plaintiff may declare  
Ccc 2 upon



upon the old Original in the Kings Bench, notwithstanding that the Statute of 5 E. 3. be that he that is outlawed before appearance render himself to prison in that Court where the Exigent was awarded, and there declare upon the Original, *Vi. 1 H. 7. 12. and 19. acc.*

The Statute of 3 H. 7. which erects the Court of *Star Chamber* provide that the Lord Chauncellor, Treasuror, Privy seal, or any two of them, coming to them one Temporal Lord, and one Spiritual Lord of the Privy Council, and the two chief Justices, shall examine Ryots, &c. and that none shall be Judges but the Chauncellour, Treasuror, Privy Seal, or 2. of them, and the other but Assistants, and not Judges. If in such Case, the Chauncellour and Treasuror do not call the others, and do by their advise, the same is Error, *8 H. 7. 13. Plo. Com. 393. acc.*

Note. The form of the VVrit of Error directed to the Justice of the Common Pleas is thus, *viz. Job. Prisoit Capital. Justiciar. & sociis suis*, and not Capital Justices only, for the Records are not before him alone in the Exchequer, the VVrit is not *Treasurario & Baronibus*, but *Baronibus tantum*, for the Records are there before the Barons only, *28 H. 6. 11.* And when a Record is removed out of the Exchequer into the Exchequer Chamber by Error, when Judgement is given all shall be remanded, and Execution shall be awarded in the Exchequer, but it is otherwise of other Courts, *15 E. 4. 17.*

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*Where a man shall not take advantage of his own default by Error and e contra; And where one who is not party to the Writ, shall have Error, or take advantage, or Error.*

**I**N 18 E. 4. 19 It is holden by *Pigot & Choke* That if Joyntenancy sever Tenancy, *Misnomer*, taking of Husband pendant the VVrit or the like which prove the VVrit abateable, if the party plead other matter he shall not have a VVrit of Error, contrarie it is of death, or other thing which proves the VVrit is abated.

If in Action brought the Defendant doth appear, and hath matter to Plead, he ought to plead it, and shall not be admitted afterwards to assigne the same matter for error, as that there be 2. dates, with addition, *Job 21 E. 3. Error 4. 7 H 6. 39. acc.*

In a Writ of Conspiracie brought by *A.* against *J. M.* and others, the Plaintiff declared that the said *J. M.* did procure the said *A.* to be appealed of Robbery done at *W.* for which he was imprisoned until he was acquitted, *J. M.* appeared and pleaded Not guilty, which was found against him, and the Plaintiff had Judgement and recorded damages, *J. M.* brought a Writ of Error, and assigned 2 Errors against the Judgement, 1. That the Judgement was given against him before any other of the Defendants were attaint, and he could not conspire alone. 2. That after Judgement

was given against him, that there was no Process against the others. And the Record being viewed by the Iustices, was that the said *J. M. cum aliis conspirationis prehabita procuravit*, the said *A* to be appealed, and therefore it was holden that the Procurator being by him, and he having pleaded to issue, he should not take advantage of his own default, who might have demurred upon the Evidence, and although it was Error in regard conspiracy cannot be by one, yet he shall not have advantage of it, *Vide acc.* 24 E. 3. 35, 36.

An Action of Trespass was brought against the Husband and Wife, and two others, the Husband at the *Exigent* appears, and the Wife, and the two others were waives. The two brought a VVrit of Error because the *Exigent* was awarded after the second *Capias*, and before the *pluries* returned, and for that cause the outlawry was reversed, and it was adjudged, that the wife in that case should have advantage thereof, although she was not a party to the VVrit of Error brought. 8 R. 2. see *Outlawry* 17. acc.

The Custodie of the Castle of *Chester* was granted unto *A.* and *B.* and the Survivor of them, *A.* dyed, and a *Seire facias* was brought against *B.* to repeal the Grant, and Judgement was given that the Grant by Letters Pattent should be cancelled. *B.* brought a VVrit of Error in the Kings Bench, and although that it was objected, that a Petition ought to have bin sued to the Queen, to have a VVrit of Error, according to the Book of 23 E. 3. 24. yet in regard *B.* claimed but a Freehold, and his life might end before he could obteyn leave to bring Error, that there the VVrit was granted, and that he might assigne Errors to reverse the Judgement, without any Petition sued to the Queen, *H. 29 Eliz. in B.R. Hudsons Case. C. 3. Part Instit. 214. b.*

In 40 E. 3. 15. In an Action brought there the Tenant tooke day *proce-*  
*partiu* without any *Essoin*, and at the day he was *essoined*, and Judgement being afterwards given against the Tenant, he brought a Writ of Error, and for Error alleadged: that there was no *essoin* entred upon Record, in that case although it was said, he might have taken advantage thereof at the time by way of Challenge; yet the Writ was awarded good. But *Quere* of that case, for the Reporter doubted of the Case; for that his Report did varie from other Copies; but that case seems to be resolved, by Mr. *Fitzherbert* in his *N. B. 21*; otherwise; because it was a matter which was for his advantage, and *C. 5. Part* in *Teyes Case* saith the same. *In fine* and saith, That a man shall never reverse a Judgement for Error, if he cannot shew that the Error be in his disadvantage, *Vide 7 E. 3. 25. F.N. B. 21. acc.*

In 8 H. 5. 2. b. A man brought a Writ of Error, and assigned for Error, that in a Writ of *Disceit* brought, he himself prayed day, and day was given him, *viz.* a longer day, then the Common day, there the opinion of *Hankford* and the whole Court was, that it did not lie in the Party to assigne the same for Error, because it was for the said Parties own advantage:



vantage; as in Case if a man will assigne for Error: that in a Scire  
he himself was essoined, he shall not be received to assigne the same  
Error to reverse the former Judgment, *Vide F. N. B. 21. sec.*

(8. Part in *Beechers Case*: a *Retraxit* entred by the Plaintiff is a bar for ever, yet in some case although such *Retraxit* be entred, yet the Plaintiff himself shall be admitted to a Writ of Error, if Judgement be entered that the Plaintiff *faciatur se alterius nolle proseguere defendentem de placito Prædicti*, and therefore the principal case there was, that *A.* brought a Writ of *Quo minus* in the *Exchequer* against *B.* and it was found for the Plaintiff, and for want of a good *Vidue* Judgement was stayed, and afterwards *A.* entred a *Retraxit*, viz. Confessed *se alterius nolle proseguere*, whereupon Judgement was given, that the Defendant *eat sine die*, but the Plaintiff was not amerced as he ought to have bin. Afterwards *A.* brought a Writ of Error, in that case it was resolved, that the Plaintiff ought to have bin amerced, for that a *Retraxit* was a voluntary acknowledgement that he had no cause of Action, and was a perpetual barr, and because he was not amerced, that it was Error, and although (as it was there said, that a man shall not take advantage, nor assigne that for Error which is for his advantage, (as his not amercing was,) yet because the principal Judgement was perfect, for that the Amercement ought to have part of the Judgement, and the same was for the advantage of the King, for that cause the Writ of Error did lye, and the Judgement was reversed, but upon a *Retraxit* otherwise entred, though there was Error in the proceedings, yet the same shall be a perpetual barr, and the Plaintiff shall not have a Writ of Error, and so was it adjudged, *Case. 17. Carols* in the Kings Bench, in *Case*, for a *Retraxit* is as strong as a Release, and Error shall not lye for Release of Errors.

# EXECUTION.

**I. How Execution shall be in a Recovery in a Court Baron, or Ancient Demesne, or Court of Admiralty, or other Court Special.**

**U**PON a Recovery in a Court Baron, they of the Court have not power to do Execution of the goods of the Defendant, but they may distrain and keep the goods in safe Custody till the Plaintiff be satisfied, 4 H. 6. 17. Execution 1. 2. H. 4. 27.

and deliver the Defendants goods to the Plaintiff there,

But where in Ancient Demesne, the Plaintiff doth recover in an Assize, and doth distrain for the damages, he may sell the distress and deliver the money to the Plaintiff, 7 H. 4. 27. Execution 114. *Cage Deliverance 21.*

In a Leet they may prescribe to sell the distress for Execution, and so in a Franchise which hath consens of Pleas, 22 Aff. 61.

The Statute restrains the Court of Admiralty to hold pleas of a thing done within the body of the County, yet they may award Execution of the body, or of the goods of a man which are found upon the Land, upon a recovery in their Court, 44. 19 H. 6. 7. Barr 116.

Land recovered in Ancient Demesne, the Tenant bringeth false judgment in Bank, and doth not pursue his Action, so as the other is ousted of his Execution in Ancient Demesne; and it was holden that hee might sue forth Execution in the Common Bench, as in case where a Writ of Error is sued in the Kings Bench and is not pursued, vi. Title Execution 27.

Debt lyeth in the Common Pleas upon a Recovery before the Mayor of Staple, 9 H. 6. Execution 61.

II. How



## I. How Execution shall be against Executors or for Executors.

*V.C. 5. part in  
Russells case ar.  
9 H. 7. 15. 7 E.  
4. 8.  
33 H. 6. 23. 46.  
E. 3. 9.  
2 Eliz. Dyer  
185. acc. so for  
a false plea.*

Execution for the principall shall be of the Goods of the dead, upon fully-administred found against them, and for the Damages of their own goods, 11 H. 4. 5.

Upon *Devastavit* returned at the *Fieri facias*, a speciall Writ was awarded to have Execution of the goods of the dead, if &c. and if not, of their own goods, 11 H. 4. 70. 9 H. 6. 9. 2 H. 4. 4.

The Executor of an Executor, shall sue Execution of a Statute made to the first Testator, and shall have debt at the Common Law, but an Account is given to the Executor by the Statute, M. 13 Edw. 3. *Exmors.*

92.

## III. When Execution shall be awarded although Error, or Attaint be brought.

Attaint was brought upon a verdict in Trespasse before Justices of *Oyer and Terminer*, and because it appeared upon Record that he had not paid his fine to the King, he was committed to the Fleet until &c. yet the Attaint is to defeat the Verdict 16 Aff. 2.

And upon an Attaint a man shall not have a *Superfedeas*, to frustrate the Execution, for the verdict shall be intended to be true untill the contrary be proved, and so no *Superfedeas* shall be upon Certificate of an Affise, P. 5 H. 7. 22. *Superfedeas* 6.

*27 Car. in B.  
R. it was holden in Dale and Warshies case, that if the writ of error have Teste, before the plaint entered, the Record cannot be removed the by, but vi. 1 f. 54. A writ of Error bearing date before judgment is good.*

If one bring a Writ of Error, *Mensa Mich.* and afterwards brings another Writ of Error, 15. *Martini*, and the other party shew the same to the Court, he shall have Execution, for so he might be infinitely delayed, but the Plaintiff in the Error may by that second Writ, remove the Record into the Kings Bench, and from thence to have a *Superfedeas* to the Sheriff to surcease Execution, 19 H. 6. 8: So where the Plaintiff in Error doth not appear at the *Scire facias*, and the other hath Execution, yet in a new Writ of Error, he shall have a *Superfedeas*, 2 H. 7. 12.

*Scire facias* upon a Fine, the Writ was returned served, and the Demandant prayed Execution, and the Tenant shewed a Writ of Error, and it was holden, that the Justices should not proceed to Execution, and whereas Execution was awarded, a *Superfedeas* issued to the Sheriff, but if a *Capias ad satisfaciendum* be, and served, no *Superfedeas* shall issue forth, because it is executed, but if a Writ of Execution be awarded, and the Record is removed by Error, the Defendant in the Kings Bench, shall find Surety and shall have a *Superfedeas* from thence: So in the Common Pleas before Execution done, if Error come, and there it is agreed, that if the Record be removed

by a Writ of Error before Execution awarded, they shall not award Execution after, because their hands are closed, and they have not the Record before them, 20 H. 6. 4. *Execution* 5. 2 H. 7. 12.

If one bring a Writ of Error, and doth not sue to remove the Record, the other shall have Execution, and although that after he bring another writ of Error, yet Execution shall be awarded for the delay that he did not sue at first with effect, 19 H. 6. 8. 13 E. 4. 4. And so upon *Non-suit* in the first Error, or if it be abated for any default of the party which sued it, the second Writ shall serve to remove the Record, but is no *Superfedeas* of the Execution, as it is where the first Writ abates by death, or not coming of the Justices, 6 H. 7. 16. 3 H. 7. 22. 2 H. 7. 12. 19 E. 4. 6. 10 H. 6. 6. 33 H. 6. 21.

If one recover in an annuity, and hath a *Scire facias* for the Arrearages, Error brought for error in the first Record of annuity, is a *Superfedeas* to the execution of the arrearages due upon the Recoverie in the annuity, but not for the arrearages after the *Scire facias*, for that is a new Originall, *Quare* 13 E. 4. 4. *Execution* 15.

If one Recover in Annuity, and the Record is removed by error, yet the Plaintiff may have Debt upon the same Record, or Debt for the penalty, for non-payment &c. and the error is no *Superfedeas*, because these are Originalls. So if one recover damages in a reall action, and the Record is removed, he may bring Debt for the Damages, because it is a new Originall. So a man shall have Conspiracy, Maintenance or Redifseisin after the Record removed by error, because they are Originalls, but he shall not have a *Scire facias* after the Record is removed, because the same is a Writ of execution, 4 H. 6. 34. *Debt* 25. 10 H. 6. 6. 18 E. 46.

Upon *Devastaverunt* returned against executors a speciall *Scire facias* was awarded of the r goods, and after the Record was removed for error, yet it was holden, that the Justices upon this *Scire facias* might award execution, but not before the Record removed, H. 10 H. 6. 6. and upon *Nihil* returned at the *Fieri facias* against them, the Plaintiff may award that they had Assets at the day of the first Originall, and execution shall be awarded of their own goods, although the Record be removed by error. 17 E. 1. 45. *Executor* 76.

The King brought a *Scire facias* upon a Recovery in a *Quare impedit* against the Bishop, who shewed that he had removed the Record by error and notwithstanding that, the King had execution, for it was holden that he is in possession presently by the Judgement, M. 22 E. 3. 29. *Scire facias* 114.



IV. Where Execution shall be of a Statute Merchant or Staple, or where one of the Comusees, or a stranger in their names shall have Execution, and where with Costs and damages, and how the Certificate shall be.

**D**ebenham was bound in a Statute Staple to *Duplege*, and the same certified into the Chancery at three severall dayes, the last day in the time of *Hen. 6.* who was presently after deposed (but that was no prejudice to the Certificate, or to the execution sued) and he had execution upon the last Certificate alone, in the time of *Hen. 6.* and granted the Land unto *T.* so that *Duplege* took no profits untill the wife of the Debtor whose Land it was, dyed, for which cause he prayed a *Capias* against *Debenham*, after the time that the extent past, and because he did not shew the speciall matter, how that he was not satisfied, he could not have the *Capias*, but with the special matter he should have it, & now after the time that the execution is past, the Defendant shall have a *Scire facias* without suggestion &c. not so within the Term without alledging speciall satisfaction, as by such casuall profit, or by the Money tendred and refused, and where upon such suggestion a *Capias* is granted, the Defendant may come into the Chancery, and traverse the suggestion, and put in sureties, and have a *Scire facias* against the Comusee, and shall go quit, if the other cannot prove his suggestion, and afterwards he was taken by *Capias* upon the first Certificate, and it was holden that the three Certificates shall be intended severall Statutes, and that the Defendant should not aver that there was but one Statute. So upon a Record three times certified upon error sued, 2 R. 3. 7. Execution 16. vide Fitz N.B. 130. that upon a speciall affidavit that execution is not done, a Statute may be twice certified, and where one Certificate was in the Common Pleas, and the other in the Kings Bench, and he had *audita querela* in the Common Pleas, and was taken afterwards in the Kings Bench, and was not bailed there, because it shall be intended severall Statutes, 29 Aff. pl. 29.

Certificate of a Statute Merchant was sued forth, and execution sued in the same County, the Sheriff returned *Non est inventus*, for which the Plaintiff sued another Certificate to the Major, by reason of which the party was taken, and it was holden that the second Certificate was not grantable, yet the party taken would not be set at liberty by 28 E. 3. 91. Execution 93.

Where there are severall Certificates in divers Courts upon one Statute, execution sued in the one shall not stay that in the other, because they are intended severall Statutes, but it seems he may sue to the Mayor to certify if there be another Statute or not, and so be helped, 29 Aff. 29. and because where a Certificate is sued in the Common Pleas, and the same Plaintiff sues another Certificate in the Kings Bench, and the Justices,

ces were certified by the Mayor, that all was but one Statute, the parties caused the Record to come out of the Common Pleas into the Kings Bench, and then a *Capias* shall issue from thence against the Conusor, and yet one Conusor was taken before in the Common Pleas, but it appeared that he afterwards escaped, 29 *Aff.* 41.

A Statute which was certified for the Testator shall by a special writ be certified for the Executor, *Fitz. N. B.* 132. so where it is not sufficiently certified before, so where the party doth keep it in his hands, so where the first Certificate is lost, and if the Major will not certify it, a *Certiorari* shall be directed unto him, *F. N. B.* 244.

The Major of the Staple hath power to hold Plea of thing done in the Staple, & upon a Statute acknowledged before him, Execution may be sued, or in the Chancery at the pleasure of the party, 9 *H. 6. Jurisdiction* 6. It was said, that Execution of a Statute Staple or Merchant shall not be sued in the Chancery without shewing of the Statute, & then the same shall remain in the Chancery, where it shall be cancelled, for the party shall never have Execution thereupon again, 2 *R. 3. 7.* but where a Statute is twice certified, and he sueth Execution upon the first Certificate, and the same is avoided by an eygne title, and the Statute is not cancelled, and he sueth a *Capias* upon the other Certificate (as he may) if the same be now cancelled he shall be punished in *Trespasse*, which is not reason, 2 *R. 3. 7. Execution* 16.

Upon a Statute Merchant a *Capias* issued out of the Chancery, returnable in the Common Pleas, The Sheriff did return *Non est inventus*, now *Capias* and *Extendi facias* shall not issue out of the Common Pleas, without shewing the Statute to the Justices, although he had shewed the same in the Chancery before, and if the Sheriff hath returned *Cepi corpus*, and hath the body here, if he do not shew the Statute, the party shall go quit, although it be lost, but upon a Statute Staple he must shew the same upon the *Capias* awarded, but not afterwards, because in the same place, 37 *H. 6. 6.* and 7.

It was holden, that if a Statute be certified, the Plaintiff shall have execution without shewing of it, but if he doth not shew it at the day of the return, the other shall be at large, although he hath Execution of the body of one or of all the Defendants, 26 *H. 6. Execution* 6. See the Statute of 5 *H. 4. cap. 12.*

*Vavasor* said, that he saw where the Recognisee died, and a stranger came in his own name, and shewed the Statute and had Execution, although the other came not in proper person, and upon a Statute made to two, if one come with it he shall have Execution in both their names, and it is a common course that every stranger who comes with the Statute shall have Execution upon it in the name of the Recognisee, 12 *E. 4. 10.* and 11 *Ex-*

*Vide* 9 *E. 4.*  
15. 36 *H. 6. 13.*  
14 *H. 7. 6.*  
11 *E. 4. 11.*

And upon *Non est inventus* returned upon the Certificate where the Plaintiff died his Executor shewed the Statute, and had Execution upon



on it, 17 E. 3. 31. But see 18 E. 3. 10. he shall not have it without a *Scire facias*. Vide Eliz. Dyer, Conusee of a Statute Merchant had it certified in the Chancery, and thereupon had a *Capias* upon it and died, upon the shewing of the Statute, his Executor had a *Scire facias*.

The Recognisee shall have Execution, although he hath released his Right in the Land, and although he hath purchased parcell of it, 45 E. 3. 2.

If Proccesse be awarded to arrest the body, and the Sheriff doth nothing, the party shall come and plead an acquittance without an *Andita querela*, otherwise it is of a defeasance, but he shall plead the defeasance, 17 E. 3. 3. but if he be taken he shall not plead an acquittance, but shall be put to *Andita querela* 45 E. 3. 24 and a man shall have an *andita querela* before the Extent returned, and thereupon shall have a *Venire facias*, or a *Superfedeas*, 17 E. 3. 3. Execution 51.

The Sheriff returned the party dead, for which cause he had Execution of his Lands, 15 E. 3. Execution 59.

Upon *Non est inventus* returned, it is no Plea, that there is no Certificate in the Chancery without a Writ to testifie the same, 15 E. 3. Execution 61.

When the Sheriff returneth *Clericus beneficiatus* upon a Statute, it is holden that the plaintiff shall not have a Writ to the Bishop *de bonis Ecclesie*, because it is not given by the Statute, but he shall have a Writ of his Lands, 19 E. 3. Execution 79. See 8 E. 3. 36. But see a *Scire facias* of an Annuity for the King was awarded *de bonis spiritualibus*, 8 H. 5. 5.

And note that upon return of the death of the Conusor, that upon a Writ to the Sheriff to make delivery upon such return, that he return that a stranger is in by a later recovery, the stranger shall not be put out without his answer, 9 E. 3. execution 197. but it was holden that a *pauper* Feoffee shall be put out without a *Scire facias*, but there is no mention made of the Return of the Sheriff, 2 E. 2. execution 118. vide 17 E. 3. execution 53.

The Conusor shall not have a *Scire facias* to have back his land upon an acquittance or the term ended, if he do not tender the costs and charges of the party, and the sufficiency of the costs shall be tried by the Countrey, 47 E. 3. 11. See 46. Aff. *Scire facias* 134. and 15 H. 7. 15. but upon an *Elegit* the plaintiff shall have the bare extent without his costs, 31 E. 3. extent 13.

When a Statute Staple is certified into the Chancery, *Capias* shall issue forth returnable there, and also proccesse to seise the Lands into the Kings hands to answer, at which day he shall have Liverie out of the Kings hands without any more, and the Writ is returnable in the Chancery, but when upon a Statute Merchant a *Capias* doth issue out of the Chancery, returnable in the Common Pleas as it may, Execution shall not be of Lands and goods untill the *Capias* be served, or *Non est inventus* returned here, and then he shall have it returned in as many Counties as he will.

will, and upon *Non est inventus* returned here, an *Alias Capias* shall issue, 37 H. 6. 7. 15 H. 7. 14. See the Statute of 27 E. 3. Cap. 9.

See, that upon a Statute staple by the Statute of 27 E. 3. Cap. 9. The Major of the Staple shall keep his body in prison, if he be found within the Staple until the Party be satisfied of his debt and damages, but if it be out of his Jurisdiction, it shall be certified into the Chancery under the seal of the Major, upon which a Writ shall issue forth to take the Body Lands and goods, and upon that Execution shall be as a Statute Marchant, and that is with Costs and Damages, and *Fairfax* conceived, that this is the course to have the costs at the end of the Term, that where the Defendant hath a *Scire facias* in Chancery to have back his Land, the Comusee shall say that he had not levied his costs and damages and then what costs and damages shall be allowed him shall be adjudged by the Chancellor according to his discretion, because the debt and time appeareth *ad quod non fuit responsum*, 15 H. 7. 16.

And it was then holden, that upon a statute staple Execution should be awarded of the whole at the first, but upon a statute Marchant, he shall have a *Capias*, and upon a *Cepi* returned, he shall remain in prison a quarter of a year to sell his Land, but upon *Non est inventus* returned Execution shall be of his goods and Lands, &c. and at a Statute Marchant is the seal of the King and of the Party, so as some conceive debt lyeth thereupon. *Quare*. But the statute staple hath not the Kings seal (but being grounded upon the new Statute Anno 32 H. 8. Cap. 6. it hath also the seal of the Party) and it was holden that Executors may sue Execution of a statute staple, or Merchant without a *Scire facias*, which he cannot do upon a Record at the Common Law, 15 H. 7. 15. and 16. And the new statute staple shall be acknowledged before one chief Justice or the other, or before the Major of the staple of *Westminster*, and the Recorder of *London*.

V. Where Execution upon a Recognisance shall bee, and how, and in what manner against the Party, or against the Feoffees.

A Recognisance of Peace, and to appear at such a day in Bank, and at the day his appearance is not recorded, and if he be bounden to appear at any Defendants suit, the other shall serve him without more, other wise it is there, yet there Execution was not awarded but by *Scire facias*, yet it appeared that the Recognisance were forfeited, 38 H. 6. 10. 39 H. 6. Execution 10.

A *Scire facias* upon a Recognisance, and death returned, for which a *Scire facias* was awarded against the heir and ter-Tenants, who being returned, warned, did not appear, and thereupon the Plaintiff had an *Elegit*. T. 38.



T. 38 E. 3. *Execution* 30. and upon 2. Attaints of Redisseisin one being returned dead, Execution shall be against the heir, and the ter-Tenant together, 19 E. 3. *Execution* 81.

V. 45. E. 3. 18. acc.

Quere if in this case the Sheriff had levied the whole 100. l. of the goods of the Conusor what remedy he hath for the surplage.

9 H. 4. 4. 23 E. 3. *Execution* 127. 15 Eliz. Dyer, 332. 1. and 2 Eliz. Dyer 193. C. 3. Part. Herberts case 33 E. 3. *Audita querela* 83. 16. H. 7. 6. acc.

After the day incurred, the conusor had *Elegit*, and a Writ of Extent deliver, &c. until 100 l. levied, whereas the Recognisance was but 100 marks and the Roll 100. marks, for which cause the Writ was amended and the Extent stood until he had levied 100. marks, and then restitution but all was entred into the Roll, 44 E. 3. 12. So where damages were taxed to 100 l. and entred 100 shil. the same was amended 45 E. 3. 19. where the *Nisi prius* doth varie from the sum demanded, 20 H. 6. 16. and 17.

A *Scire facias* against the Feoffee of the Recognisor who said that there was an other Feoffee of other Party not named, &c. for which Writ was awarded to warn him to shew cause why his Lands should also be extended H. 41 E. 3. *Execution* 37. See 45 E. 3. 17. where the Feoffee shall have *Audita querela* against the Conusor & the other Feoffee, and a *Venire facias* against both, and the other Feoffee only, and a *Venire facias* against both, and the other Feoffee pleaded an Acquittance, &c. and upon execution sued against the Feoffee where the Recognisor also hath Lands

he shal have a *Scire facias* against him to answer for his portion 47 E. 3. 4. And note, that the Writ shall not abate because all the Feoffees are not named, yet none shall answer until they all appear, M. 11 E. 3. *Execution* 266.

Upon the Recognisor returned dead, and a *Scire facias* against the Ter-Tenant, it is no Plea that the Recognisor hath an heir, but it is a good return that the heir hath Part of the Land, *ibid*.

Execution sued against the Ter-tenant was challenged because first sued against the heir: *Tresilian*, you ought to suppose that he hath an heir, and that he hath Assets, but the heir is bound no more then the Feoffee, because he is not named the Recognisance, therefore answer: Also he need not first sue against the Executors, T. 7 R. 2. *Execution* 46. But Process shall not be awarded against the ter-Tenant until the debtor, or his heir be warned, but the heir and the Tenant may be warned by one *Scire facias* or first the heir, and upon *Nihil* returned, then the ter-Tenants, T. 11 E. 3. *Execution* 139. but see 46 E. 3. *Brief* 605. A *Scire facias* against the heir, executors and ter-Tenants, and all warned, although the heir and executors had not any thing

C. 3 Harlots case, &c.

The Recognisee by the first Writ shall not have execution but of the Land which the Recognisor had at the time of the Recognisance, and upon Return that he had no Land, then he shall have a VVrit to trye what he had at the time, &c. or after, &c. 36 E. 3. *Execution* 47. 19 E. 3. 1. where he had all at the first Writ by *Elegit* T. 23 E. 3. *Execut.* 69. Stat. West. 46.

Where two sued execution, the monies was delivered to one, and to the attorney to the other, M. 14 E. 3. *Execution* 76. and the Defendant

Court did pay the money to one, the other being absent, and it was good, and the Recognisance was withdrawn, *M.22. E.3.15. execution* 87.

A *Scire facias* upon a Recognisance doth not ly, if against the Tenant of the Freehold, not against the Guardian alone, and the heir shall have his age, See *12 E.3. execution 77.* he sued against the other ter-Tenants, and the heir within age, a writ brought against the Lessee for years alone was abated, *H.20 E.3. Scire facias 121.*

Execution sued against two, one was returned dead, and that the other had nothing, the Plaintiff prayed a *Scire facias* against the heir of him that was dead, and the Ter-tenant, and surmised that the other had Assets elsewhere, and because he would not sue execution upon the nihil returned he had a *Scire facias*, *P.13 E.3. execution 78.* and if the

Plaintiff doth know that the one hath not any thing, he shall have a *Scire facias* against the heir of the other for the whole, yet no recognisance doth bind every one in the whole, *M.5 E.3. execution 100.* but by the Statute he may have a *Scire facias* in the other County, and then execution against the first shall cease, untill the other appears, *H.12 E.3.9. execution 141.*

It was said, that a purchase of parcell of the Land did extinguish the Recognisance, *M.22 E.3. execution 88.* and so of a Statute

If a man acknowledge a Debt without plea in Banck, execution shall not be awarded by *elegit* without proceffe of Law, as an action of Debt, so the Statute of *West. P.2. E.2. execution 120.*

A Recognisance payable at divers dayes, upon one day incurred, he had not Execution by *Elegit* of the moyety of his Land, and then the other day incurred, he now shall have Execution of the rest during his possession of the other moyety, *M.10 E.2. Execution 137. quod mirum.* And by the

later *Elegit* he ought not to have the moyety of the rest, and that also was doubted, and denied by *Shard*, that by such means he should have 2. Executions, where he might hold the first Land, until the whole were le-  
vied, *Quere:* yet *Elegit* was granted upon the first day broken, *M.16 E.2. Execution 138.*

A man recover his debt and damages, and before Execution dyeth, a *Scire facias* shall issue against the heir, and ter-Tenants of the Lands of the Defendant at the time of the Judgement, and upon that, the Party may have *Elegit* 4 *Eliz. Dyer 208.7 H.4.22. acc. Quere, Plow. Com.* if the Party hath not election to have execution against the heir, or executor. *Dyer 149. 18 439. a. 10 H.7.3. by Vavasour.*

The heir shall be charged in debt of the Lands which he had by discent the day of the Writ brought, and not the day of Judgment, *M.18 E.2. Execution 241.*

One recovers Debt, and hath a *Scire facias*, now upon that Recovery he shall not have a *Fieri facias* of his goods but a *Scire facias*, *M.18 E.2. Execution 143.*

A *Scire facias* against the principal and sureties the principal being

*Vide 13 Car. in B.R. the case was Hopton acknowledged a Statute to Dawes, and afterwards conveyed part of the Lands to the Lessor, the Conusor afterwards conveyed the other part of the Land to Dawes the Conussee. It was holden in that Case, that by the purchase of part of the lands by Dawes, that the Statute was extinct.*

*7 E.6. Dyer 81. 2. and 4. Ma. Dyer 149. 18 Eliz. Dyer 341. C.3. Part. Harberts case, the Plaintiff shall not have Elegit but of such Lands, as were discented to the heir, at the time of the writ brought.*



warneth appeareth; the sureties not, it was thought fit that execution should be against the sureties for their Contempt 11 H.4.12. *Condemnation. 9*

A Writ out of the Common pleas against ter-Tenants naming their Names, and another in another place to such a one, what Land he had at the day of the Recognisance and not generally of his Lands, for which it was abated, 46 E.3.29. *Brief. 605*. But it was holden that he shall have a *Scire facias* against ter-Tenants and name them at his peril, and if they have but for years, he who hath the Freehold shall have an *Affise* 20 E.1. *Scire facias 121*.

A *Scire facias* against ter-Tenants, they say that one R. holdeth parcel not named R. being warned appeareth, saith that A holdeth another parcel not named; now Execution sh all not be against the first Tenants, for they may hold to the Plea of R. if the Plaintiff wil reverse it, and if he confesse it, all shall stay till A be warned, for Execution shall not be taken by parcel, and the first might plead other matter afterwards against the Execution, and a Writ sued forth to warn A and not him and all the ter-Tenants, nor all whom he will call Tenants, *Quare* this, And afterwards A was returned *Nihil*, & then if A appeareth by Attorney, he may plead how that he had not day; otherwise the other shall have Execution, M 11 E.3. *Execution 266*.

But see 2 E.3 *Scire facias*, 141. That where one was returned warned, and the other *Nihil*, and he who was not warned did not appear, yet Execution was not awarded but Process by *Testatur* against the other into another County who made default, and the other would have pleaded an Acquittance by attorney, but could not, because he had not day in Court, *Quare*, if he had appeared in proper person, &c.

The Sheriff returned an extent, but not that he had delivered it, &c. the Party had a *Scire facias* and *sicut alias*, because the Court was not satisfied, if he were satisfied, M 12 E.3. *Execution 117*.

A man condemned and outlawed brought a Writ of Error, and found bayl, and did not keep his day. *Mordant*, the Party is put to a *Scire facias* upon the Recognisance against the bayl, because he is now out of Execution, because he was once in Execution, and the Recognisance is to the King, and not to the party for which cause it seems he shall have *Capias*, 8 H 7 9 See 16 H 7.21 E.4 80.

So it is agreed, that where a man is in Execution upon a Statute, and findes bayl, and doth not appear at the day, but at another day the bayl bring him in, now it is in the Election of the Plaintiff to take Execution of his Body and Land, or to take the bayl, See 59 E.3. *Execution 43*.

VI. When Execution shall be for one, or against one, and that for the whole, and when Execution shall be for Part.

If three recover damages in Assise, and before execution taken forth two of them dye, the third shall not have Execution, but of his portion: but if Execution had bin sued for damages, and the Land delivered to three by *Elegit*, and afterwards two had dyed, the third should hold the land until all the damages were levied, otherwise is it of a Recognisance or debt recovered *M 13 E. 3. Execution 75.*

If two sue Execution, and before extent one dyeth, yet the Sheriff shall extend the Land, and shall deliver the same to the other, *11. R. 2. Brief. 938.*

But if two sue Execution of a Statute-Merchant, and the Conusor is returned dead, and then one of the Conusees doth alleadge the death of his Companion, he shall not have Execution without suing a *VVrit* out of the Chauncery upon his Case, *25 E. 3. 38. Execution 92.*

A man recovered 40 l damages, and by *Fieri facias*, the Sheriff delivered him 10 l. because the other had no more goods, who is now dead, it was now said that if he hath Executors who hath Asssets, Execution shall be sued forth against them, but he shall have Execution against the heir at his peril of the residue *M. 19. R. 2. Execution 263.*

And it was holden that the heir shall not be charged but for his portion upon the Statute of the Auncestor if there be other Feoffees, so of the Guardian, when the Heire is under the Guardianship of many, *H. 48. E. 3. Voucher 76.*

The King not being well informed did licence his Tenant in Tail to alien, and to take back estate to him, and his Wife, who did so and dyed, the Wife held the Land, A *Scire facias* issued for the King, for the mean profits, because the King was deceived, and for the 2, parts she shall be charged but not for the third part, because she had cause to have Dower of the same, yet some were of opinion that she should answer the whole, because she was privy to the Wrong, *Vide 40. Aff. 36. Gard. 1.*

One levied 10 l. by *Fieri facias* in the time of the Testator, and the residue by *Fieri facias* of the Executor; or by *Elegit* against the heir, but there he prayed the whole first, and it was no folly in him, *19 E. 2. Execution 163.*

Execution sued against all 6. Conusors of a Statute, & upon the taking of one, he had a Writ to take the others, although that one was in Execution, *26 H. 6. Execution 6.* And where he shall sue against all, or against one, See *4 E. 4 41 5 E. 4. 5. 44 E. 3. Execution 36.* And where one being in Execution Process shall be against the others, See *34 E. 3. Execution 129.*

E e e

*vi. 29. Aff. 37. C. 3 part in Sir William Herberts case, a. seised of land bind them in a Recog. the Conusor cannot extend the land but of one of them all of them must be equally charged.*



Vide 36 H. 6.  
4. acc.

*Scire facias* upon Damages recovered against 2. one was returned warned, and that the other had nothing, the Demandant prayed Execution against them both at his Peril, and upon a Recovery in value against two the Execution shall be against both, but here he that appeareth shall have *Idem dies* until the other be warned, or a *nihil* again returned, although that he who appeareth confesseth the Action, and if one cast a Protection no Execution shall be against the others, 1 H 5. 4. Execution 22.

Note there is a differencie betwixt doing Execution, and suing Execution, for if a man do recover against 3, and one is present at the bar, he shall be taken in Execution, but if they be all absent, he ought to sue forth Execution against them all in common, by *Strange Justice*.

A *Scire facias* upon a Recognisance against two, the one is returned dead, and the other that he hath nothing, the Plaintiff at his prayer shall have a *Scire facias* against the heir and Ter-tenant of him who was dead, and by *Testatum* in another County against the other, or he may have Execution against the Survivor solelie, but he shall not have Execution against the heir, or Executor of him who is dead, without also suing Execution against the Survivor, 13 E. 3. Execution 78.

*Scire facias* after the year for Damages recovered against two in an Affise, the one was returned dead, and the other warned, and it was holden that he should not have Execution against the Survivor without suing against the heir, and the Ter-tenant of the other, yet the Sheriff might levey the whole upon one. But *Thorp* was of opinion, that the Survivor who is party of the wrong might onlie be charged, but the opinion of the Court was contrarie. Also the Sheriff cannot levey the whole against the heir of the one, or the other Ter-tenant, for there *audita querela* he shall be charged above his portion, 19 E. 3. Execution 81.

A *Scire facias* against two, one warned appeareth, the other makes default, and the Plaintiff prayed Execution against him, and should not have it, for then he cannot sue him who appeareth, wherefore Execution shall stay, P. 6 E. 3. 13. Execution 103.

*Scire facias* upon a Recoverie against 6. where 3. were returned warned, and 3. dead, It was holden that a *Scire facias* should issue against the heirs and Executors, and by reason of the nonage of one of the heirs, the proceedings were stayed against the rest, and no Execution against any of them, because the other might have an Acquittance, 29 E. 3. 39. Execution 131.

Maintenance against diverse, one who was found guilty is in the Marriage, now the Plaintiff shall not have Execution against him without releasing to the others, as in Trespass. And it was said that he should not execute against the others without setting him at large, for otherwise he hath his Execution, which shall not be without release to the others. And it is there said, if three are condemned jointly, and one of them be taken by a *Capias ad satisfaciendum*, the Plaintiff shall not sue the others, 30. Judgement 66.

But where three are bound in a Statute jointly and severally, the

Vide 1 H. 5. 46.  
acc.  
Vide C. 5. Part.  
in Blunfields  
Case, and 33  
H. 6. 47, con-  
trarie he may  
take the body  
of both in exe-  
cution, and the  
body of one is  
no full satisfac-  
tion but a  
pledge onely for  
the debt.

iff shall have Execution against one, or all of them at his election, and not against two, and so of an Obligation. But if he bring debt against them all upon a Joynt Bond, the Execution shall be against all; but if he bring it by several *Pracipes*, he shall not have Execution but against one, 34 E.3. Execution 129. 14 H.4. 19. Execution 29.

Where three are attainted of Disseisin, the King may take Execution for his fine against one only, but so cannot the Party, 15 H.5.5. Execution 153.

VII. Where Execution shall be upon a Recovery here against him, who hath not Land but in Liberties, County Palatines, or Ancient Demeasne.

One was surety of A. for to keep the peace, who brake it, and the surety had nothing but in *Durham*, the King shall send to the Bishop or his Chauncellor to do Execution, M 1 E.4. Execution 11. and that shall be upon return of the Sheriff that he hath nothing, and the Party did surmise that he had not any thing but within the County Palatine, and the Tenor of the Record which is certified shall be sent thither, F.N.B. 132.

A man sueth Execution of a Statute Staple, and the Defendant being returned *Nihil*, he doth alledge that he hath Land within the 4. parts, for which a Writ was awarded to the Constable there to do Execution. The Reporter thinks that he ought first to have a Writ to the Sheriff to deliver his Lands out of the Kings hands, and then a Writ to the Constable, M.21 E.3.49. Execution 70. Br. Execution 115.

At the *Capias* upon a Statute Merchant upon *Non est inventus* returned Writ to seize his lands, and the Sheriff returned, that he had not any but in Ancient Demeasne which he held joyntlie, &c. the Plaintiff surmised that the Land was Frank-fee, and that he was sole Tenant, and upon that had a Writ, &c. P 15 E.3. Execution 62.

A man had Execution of a Statute Merchant of Lands in Ancient Demeasne against the Feoffee, and being put out he shall have an Affise at the Common Law by the opinion in M.2 E.2. Execution 118. But it was holden a good Return upon a Statute, that the Party had not any Land but in Ancient Demeasne, P.15 E.3. Return of the Sheriff 109.

Land in Ancient demesne may be put in Execution upon a Statute Merchant because the Party

thereby recovers not Freehold, but Elegit is at the common Law and Ancient demesne is acquiesced of execution by 3. Elegit. by the statute of West. 2 Cap 18. 2 E.2. Execution, 89. acc.

He who had recovered Damages in Trespass, sued forth an *Elegit* of Lands in Ancient Demeasne, and it was held, that he being put out, could not have an Affise, because he ought not to have had Execution of those Lands, for the Statute extends only to Lands at the Common Law, and shall not bind in Ancient Demeasne where the Recoverie is by Writ of Right Close in the nature of any Action, H.8 E.2 Execution 136. See according to that 22 Aff. 45. Ancient Demeasne. 23. That the Sheriff shall not deliver Lands in Ancient Demeasne by *Elegit*, & if the Recognisee dyeth, his Executors have not any remedy, for they shall not have a Writ of Right



Close in the nature of an Assise, so neither the Testator as I conceive, but upon a Statute Merchant Lands in Ancient Demesne were delivered in Execution, and held good, 7 H.7. 11. See 7 H.4. That Lands in Ancient Demesne are good Assets.

VIII. *When after Execution awarded a Superfedeas shall issue forth to cease, &c. And where execution shall be stayed against one until Judgement be given against the other.*

**D**Ebt against three by several *Precipes* upon an Obligation joynt & several, all plead, and its found for the Plaintiff, he hath a *Capias* and Execution against one, who prayed a *Superfedeas*, or that the Plaintiff would relinquish the others, & a *Superfedeas* awarded *causa conscientie*, because the Recovery was by default, *Quare*. It seemes the Plaintiff shall never have Execution against the others when he hath chosen Execution against one, but in Trespass where hee sueth for Execution against all the Defendants, and one onely is taken, yet Process shall continue against the others, but that is not like the other case, 4 E.4. 14. *Vide* 14 H.4. 19. That he who recovers against two upon an Obligation by several *Precipes* shall not have Execution but against one at his Peril.

38 H.6. 13. 12  
H.4. 8. act.

A.B.C. & D. are sued by several *Precipes* upon their joynt and several obligation, A. & B. are condemned, C. doth demur, D. pleads to issue, and their pleas continue, the Plaintiff sueth Execution by *Capias* against A. *Pigot*, in Trespass, no Execution shall be against one until the other be condemned, and here it appeareth by the information of the Preignothone that all are sued upon one Obligation, and the entrie is general that Execution shall be, and in Debt upon all condemned and one taken, Process shall issue forth against the others, &c. and a *Superfedeas* was awarded *causa conscientie*, because he did recover by Default, 5 E.4. 4.

*Vide C. Part. in  
Plunfields  
Case.*

Where in trespass some are found guilty, and the pleas of others depend in Process, the Plaintiff may pray Judgement against those who are taken, and Execution shall cease, &c. and then he may Release, or, relinquish against the others, and have execution against the first, 5 E.4. 5. 15 E.4. 27. 36 H.6. *Fieri facias* 3.44 E.3 7. *Execution* 36. So it seems in debt by several *Precipes*, where all are condemned, and one is taken, 4 E.4. 41.

So in debt by one *Precipe*, and parcel is found or confessed, and they are at issue upon the residue, he shall have Judgement, but Execution shall stay of the debt and damages, until, &c. but of Costs he shall not have Judgment untill, &c. 36 H.6. 6. 14. So upon severall Issue in Trespass or Demurrer for part, and the issue found 32 H.6. 6. and 7. *M.* 14 H.7. 7.

A Statute-Merchant was certified, and a *Capias* awarded, the Defendant came and purchased an *Audita querela*, and prayed a *venire facias* out of

the Common Pleas, where it ought not to issue untill Execution returned, yet for the mischief of the Party that he should not be imprisoned a *venire facias* was awarded with a clause of *Superfedeas*, H. 17 E. 3. Execution

51. Execution of a Statute was sued against T. who brought *Audita querela*, and *Scire facias*, and was non-suit, for which Execution was awarded, then came G. as Tenant of Parcel, &c. and had an *Audita querela* upon release of the Conusee supposing part of the Land of G. to be delivered, and as to the residue *quia timet*, the Sheriff did certifie that none of his Land was delivered, and the Writ to the Justices is to hear him, if Execution be sued, which is not, to the *Superfedeas* issued without warrant, for which Execution awarded, P. 17 E. 3. 27. *Audita Querela* 21.

In Dower, the Tenant vouched in a forrein County, the Demandant did recover presently in the same County where the Writ was, but no Execution till the voucher was determined, H. 13 H. 4. Judgment 221.

Entrie upon disseisin of land and rent, as to the Land it was found for the Demandant, the Rent yet did depend in Plea, the Demandant prayed a *Fieri facias* of the Rent, and had it, and this returned *Fieri feci*. Littleton said: that the Defendant shall not have Error until Judgment be also given of the Rent, and in Trespass against many no Execution shall be against any condemned, or acquitted, for which here he prayed a *Superfedeas*, and the money might be delivered to the Defendant till the Rent also tryed; Moit, it is true in Trespass, but here the Rent and Land are altogether several, as Debt upon an Obligation and Contract, where recovery of one, or Damages for the one doth not touch the other. *Prisoit*, here is but one Declaration, for which he shall not have Error, till the whole be determined, otherwise it is where there are several declarations, as upon several Precipes it is the use, but bring a special Writ of Error, and we will advise coit, And it seems the Error was in that, that Execution was awarded of the Land before Judgment of the Rent, P. 36 H. 6. *Fieri facias* 3. 36 H. 6. Vide C. Execution 26. a difference taken

14. Note, where in Trespass the Plaintiff had Judgment against one, and the other did depend in issue, and afterwards barred the Plaintiff, yet upon his prayer he shall recover against the other, otherwise not, 44 E. 3. 8. between a general Nontenure and a special Nontenure pleaded.

A *Scire fac*. upon a fine, the Tenant as to parcel pleaded joynt-tenancy, and as to residue a special Nontenure, for which no Execution without nure pleaded, that tryed, which he should have had upon general, Nontenure pleaded, and in a *Scire facias* upon a Recovery upon Nontenure pleaded, he shall have Execution at his peril, 11 H. 4. 16. and he was driven to maintain his writ and that seems to be the cause, that in a *Scire facias* Nontenure generally is no Plea. 7 H. 6. 18. 14 E. 4. 2, &c.

Upon such grant of Rent in Fee that it shall cease during the Nonage of the heir &c. yet the Wife shall recover Dower during the Nonage, but Execution shall be stayed, 10 H. 7. 13. Vide 22 E. 3. acc.



IX. Where the Survivor shall be charged, or the Heir of the Executors of the others, and where the Heir, and Executors, and Survivor, and ter-Tenants.

**S**Cire facias upon a Recovery in Detinue against Husband and Wife the Husband dyed, and the Writ issued against the Wife as his Executrix, and held good: although as was conceived it might be against her Wife, because she was party to the Judgement, *M. 13 H. 4. Br. 17. Vi. 4 H. 6. 6.* where upon an Obligation to Husband and Wife, he brought Debt as Executrix of her Husband.

**A** Recognisance made by two, upon the death of one the Party may have Execution against the Survivor, or against him, the Heir, and the ter-Tenant of the other, *13 E. 3. Execution 78.* yet in the Recognisance it is not mentioned that every one is bound in the whole, *5 E. 3. Execution 110.*

*Vi. C. 5. Part. Blunfields Case 29 H. 8. Cont.* But upon Damages recovered against two, the execution shall not be against the Survivor only, and if both be alive, and the one be taken by a *Capias*, the other shall be also taken, otherwise the first shall be discharged, *Vide 19 E. 3. Execution 81. 29 E. 3. 7. Execution 155.*

*Vide C. 3. Part. Sr. William Herberts Case 1. Cont.* **I.** and **H.** were bound to **E.** afterwards **G.** marrieth **E.** and afterwards **E.** is made Administrator to **H.** with others, **G.** and **E.** his Wife brought action against the same **G.** and his companions, and held it did well, and that he should have such Action upon the Band made by **H.** himself. Afterwards exception was taken that **I.** had also made his executors not named, yet all was good, because **H.** did survive him, but at the Action, &c. And afterwards it was holden that where both are dead, he ought to charge the executor of the survivor **E.** alone. So of a warranty, &c. and it was a joynt Obligation, *31 E. 3. Executors 82.*

Obligation made by two, one dyeth, **Hank**, the Obligee shall sue the Survivor with the executor of the other, otherwise it seems where there are two to whom, &c. for the executor of the one shall not joyn with the other, *Vi. 14 H. 4. 1. 8. 9.*

Two executors being charged with their proper goods upon *Draught* returned, if one dyeth, the other shall be charged alone, or he with the executor of the other *27 E. 3. 80. Executors 95.*

And some thought that upon a joynt Bond, that the Survivor should be only charged, and not the executor of the other, otherwise it is of a warranty, *14 H. 4.* and so was the opinion of *Vavifour 12 H. 7. 3.*

Note, the reason is because it is in the personalty, but otherwise of warranty, because it is a Real Covenant.

X. *When Executors shall be sued in divers Counties and how, and when a Capias in one County, and an Extent in another.*

Execution against one Executor who had denied the Deed of his proper goods, and against the others of the goods of the dead, and if they be in divers Counties, and hath proceſſe according, every Sheriff shall do Execution of the whole; for the Writ is, *babeas denarios hic*, and if he levy more than the Land, it shall be delivered to the Defendant, 17 E. 3. execution 70. and that execution he prayed first.

One prayeth an *elegit* upon a Recognizance of 40 s. to the Sheriff of S. who returned that he had 24 acres, and that he had delivered to the Plaintiff the Moiety, who said he had delivered nothing to him, and said, that the Defendant had 10 l. in N. and prayed an *elegit* thither, and in S. and it was holden that he should not have execution in another County then where he first took it, 18 E. 2. execution 240. it seems to be otherwise of a *Capias* for the body, 20 E. 3. Execution 84.

If one pray Execution of part of the Land upon a Statute Merchant in the name of the whole, he shall not afterwards have Execution of the rest, 22 E. 3. 14. Execution 134.

The opinion was, that if a man sue Execution of a Statute Merchant in divers Counties, and in each for the portion, viz. 20 l. in the one, and 20 l. in the other County, yet upon *nihil* returned in one County he shall have Execution of the whole in the other, if he hath Assets there 16 E. 3. Execution 49 and a man may well pray Execution of the body in one County and an *Elegit* of the Land in the other County, 41 E. 3. execution 138.

XI. *Where he against whom Execution is sued, shall tender the money to the Plaintiff himself, or he who hath his estate, and where payment to one Plaintiff is good.*

For Execution of a Statute, the Recognisor shewed an acquittance of parcell, and tendred the residue in Court, and had a *Venire facias* against the Creditor and his Assignee, the Assignee appeared, the other made default, and at another day came and appeared also, and the Assignee made default, it was holden that the money should be delivered to the Assignee who had the interest, and the other should have his Land again at the terme, 15 E. 3. Responder. 3.

Upon a Writ to execute a Statute Merchant, the Debtor was returned, and Execution sued against the Ter-tenant, who shewed now a defaultance.



feasance with Condition, and had a writ against the Conusee, and also against his alienee, the Conusee appeared, the alienee made default, *Idem dies* was given to the Conusee, without putting him to answer, and a new distress against the alienee, *H. 15. E. 3. Respond. 1.*

24 E. 3. 10. *br.* In *Audita querela* the Proceſſe is *Venire facias*, *Alias* and *Plures*, and upon *nihil* returned, upon that then a *Capias* shall issue forth against the Conuſor, *F. N. B. 104.*

Execution sued of a Statute Merchant, the Conuſor ſhewed an acquaintance of part, and tendered the residue, had a writ to the Juſtices, and upon that a *Venire facias* against the Conuſee, and his Assignee, and the Conuſee was returned warned by Mainprife, and the assignee *Nihil*, upon which by *Testatum* proceſſe iſſued against him in another County, *13 E. 3. Suggestion 13.*

**XII.** *Whether the ſheriff ſhall deliver the Lands preſently upon the Execution, or ought to return the Extent, and ſhall have a Writ after delivered to him &c. and how he ſhall carry himſelf in doing Execution.*

*C. 5. part Se-  
maines Caſe,  
acc. 91, 92.*

**T**HE Sheriff or other Officer of the King, who comes to do Execution may break open the houſe, if he cannot have the Keys, for the miſchief, &c. *18 E. 2. Execution 252.*

The Sheriff may break the houſe to take a Felon, for the writ is *Nemo mittas aliquam libertatem*, and the privilege of the houſe doth not hold against the King, *Vide 18 E. 3. br. Coron. 158. acc. C. 9. part. 69.*

But ſee a difference taken where the King hath intereſt for Felony and where it is to the party for debt or Treſpaſs, *13 E. 4. 9.* and where the Sheriff upon *Fieri facias* breaks the houſe, becauſe he cannot otherwiſe enter and take the goods, now he ſhall be excuſed of the taking, but not of the breaking of the houſe, See, it did not appear there that he could otherwiſe enter, *P. 7. E. 3. 16. 18 E. 4. 4.*

One juſtified a houſe as Bailiff upon a *Capias* awarded by the Juſtices of Oyer and Terminer upon an endictment of Treſpaſſe, *27 Aff. 35.* So for Hue and Cry levied upon him who hath hurt another, ſo as he is in danger of death, *7 E. 3. 16.*

A Statute Staple was three times certified, and ſeverall Proceſſes to ſeverall Sheriſſes to do execution, one Sheriff extended the Land and kept it in his hand for the King untill a writ iſſued to deliver it to the party, *3. 7. Execution 17.* the writ here is *& liberari fac*, as upon Statute Merchant, yet a writ iſſued afterwards to deliver it, *F. N. B. 131. Vid. C. 1. part. 1. Hoer Caſe, C. 14. part. Fulwoods Caſe,* all writs of execution, if they be duly done, the execution is good, though the writ be not returned *Fieri Facias*, but an Execution by force of an enqueſt, as an *elegit*

be returned, otherwise it is not good, *vide* 11. H.4.73.6. M.15. Car.  
in R. in Collifods Case *adjudge acc.*

Upon *Elegit*, the Sheriff ought to return the extent, and also that he hath delivered the Land &c. 12 E.3. *Scire facias* 117. and the extent shall be good for the sum due, notwithstanding that it be of more. 44 E. 3.11. *execution* 35.

The Sheriff returned the extent upon a Statute Merchant, but that he had not delivered the Land to the party, whereupon the plaintiff prayed that he might be amerced: *Quare* 41 E.3. *Execution* 39 and upon Execution sued of a Statute Merchant acknowledged by husband and wife, the Sheriff returned that he had extended the Land of the Husband, but had not delivered it, and that the wife was dead who had no Land, and he was amerced because he had not delivered the Land, *Quare* if the Land of the wife shall be delivered in such Case, T.14 E. 3. *execution* 73. but if an extent be made by the Sheriff, the Plaintiff may refuse the Land until the body be also taken in the same County, or in another County, T.30 E.3. *execution* 84.

The party may refuse the Land which is extended too high upon a Statute, otherwise he should be concluded to pray in the Common Pleas that the extendors might hold it, 44 E.3.2. *extent* 11.

He may as well refuse because the Sheriff will not deliver him but part of the Land of the Conusor; for if he should accept of that he should be concluded to demand the whole afterwards, 10 E.3. *execution* 84.

*Vi. 40 E.3.26. & anxi.*  
*the refusal must be at the first day the extent is returned, for if he once confesse to the extent, he comesto sale to pray the Extenders may hold the Land.*

### XIII. Where Execution shall be extinct by Deed, or purchase of parcell of the Land, and where suspended.

It was holden by the Court, If the Conusor of a Statute Staple do enfeoff the Conusee of part of the Land, that the Statute is discharged; and if he do enfeoff the Father of the Conusee, and the Land descend it is all one, and all discharged by Moil, which Danby denied, M.35. H.6. *See before in margent, Leak and Davies Case.*  
*vide* 16.7. 16. & 22 E. 3.16. And see which Moil for the other point, 15 Com.in B.R. *adjudge acc.*

But the contrary hath been adjudged of a purchase in Error, 45 E. 3.22. but there it was a Repurchase, but the body is first charged, then the goods, and the Land which remaineth, M.11 H.7.4. the party had Execution against a stranger who disseised the Conusor, M.13 H.7.32.

And a general Release of his Right in the Land before he hath Execution shall not bar him, 45 E.3.22.  
But if the Conusor enfeoff the Conusee of parcell, and a stranger another parcell, or the stranger first, and after the Conusee, the Land in the hand of the stranger is discharged: So if the Conusee

*vide* 5.H.7.25. *per Townsend*  
*Plo.Com.72 in Rolfs Case acc.*  
*11 H.7.40.*  
*13 H.7.6.*



see enfeof a stranger of parcell, 25 E.3.51. 13 H.7.22. and if the Conusee purchase parcell, and of that doth reinfeoff the Conuſor, and he thereof doth enfeof a stranger, yet the Conusee shall have Execution of it, 45 E.3.12.

The Defendant returned dead at the *Capias* upon a Statute Merchant, a Writ issued against his Lands, the Sheriff returned that he could not deliver them, because a stranger had Execution of another Statute before, and holden a good return, and the party shall have *Venire facias*, and Distresse infinite against the stranger, and no other Procelle, for he shall not have a *Scire facias* upon suggestion, 9 E.3.24. execution 22. Aff. 28. The execution of another by a later Record shall not suspend my execution.

When the Land of the the Conuſor comes into divers mens hands, and part descends to the Conusee, the Debt is gone, 34 Aff. 15. Aff. 318. *Quere*, Pigot yet conceived that he might have execution of the body and goods, but it is holden that if the father, and a stranger be bounden to the Son in a Recognisance or Statute, who hath execution of their Land, and the father dieth, so that parcell of the Land descends to the Son, that the whole Statute or recognisance is discharged, 24.15 E.4.6.

One Jointtenant is bound in a Statute, no part of the Land shall be liable to Execution if he doth not survive, so Land is given to A. and B. and to the heirs of A. shall not be bound to the execution of the Statute of A. living, 23 M.15.E.3.45. *Audita querela* 32.

If *Cestuy que use*, before the Statute of 19 H.7.cap.15. makes Lease for years, or acknowledges a Statute Merchant, and the Feoffment enter and defeat it (as they may) yet after the Statute the Lessee shall recover, and the execution shall stand, as *Fitzherbert* reports, but the book is large seems that he shall not enter, but shall have a re-extent, 7 H.7.6. execution 19. T.11 H.7.27.

At the Common Law there was no remedy if a Statute were once voided, but now the party shall have a new *Scire facias*, and execution by the Statute of 32 H.8.cap.5.

If a man hath Execution of Land in the right of the wife who dieth, and her heir enter unto the Land, the plaintiff shall have a new execution, 15 H.7.16. and by *Fitzherbert*, if after a man hath recovered damages or debt, and hath the party in execution who dieth, that now he shall have a *Fieri facias* or *elegit* of his goods or Lands, *Fin. 2. B.246.*

*Vide* 34 H.6.  
47.4 E.4.39.  
33 H.6.48.  
Danby 29 H.  
8.22.47 E.3.  
Execution 41.  
that he shall  
have *Elegit*.

where Execution shall be of the goods of the one for the other, and where of the goods of the villain for the Debt of the Lord.

**A** *fieri facias* of damages recovered, if the party hath sold the goods by Collusion, after Judgement, the same is not materiall, if he hath not seized them. *Scrope*, that I grant you, but we do not grant execution against them for that cause, and the Plaintiff by Testimony had execution in another County. 2 E. 3. execution 108.

**I**n a Writ upon the Statute, that he do not distrain out of his fee, the Defendant did justifie as Bailiff for an extent against P. whose villain the Plaintiff is, and good, because upon the matter they are the goods of P. M. 1. 2. execution 282.

**A** *fieri facias* issued for the King to execute an Annuity appertaining to an Abbey in his hands, as issuing of a Parsonage, upon which the Sheriff sold two books of the Church. *Rolf*, the Writ was to do execution of the goods spirituall and temporall, and these belong to the Parson and not to the Parson. So do the Bells and the Churchwardens shall have an action for them, but if they were the goods of the Parson, the King might distrain them although the Abbot could not, and although I may distrain the beasts of another upon the Land of my Tenant for my Rent, yet I cannot sell another mans goods by a *Fieri facias*. *Rolf* and *Babington*, Goods cannot be given to the Parishioners, but to the Church. *S. Deo & ecclesie* so they are the goods of the Parson. *Rolf*, Goods shall not be given *Deo & ecclesie* for to a Church Parson, but they may well be given to an Abbey &c. vide 8. H. 5. 4. execution 166.

**XV** Where Execution shall not cease, although the right of the Land depends in triall, & where it shall cease for the debt of the King.

**W**here by an Abbot which is found, and *Quate jus* issued, and *Thorpe* awarded execution for the damages, the right not being found. 38 E. 3. 27. execution 31. see 40 E. 3. 37. acc. but the contrary is holden, 114 E. 3. execution 71. and that he shall not have execution by parcels, and if the Collusion be found he shall have no damages. M. 16. E. 3. Collusion 21. upon Writ found for an Abbot by default, the Justices would not give Judgment until the Collusion was entered of. 110. H. 3. execution 3. 40 E. 3. of mod. fin. 110.

An Abbot who recovers in a *Replevin* by Confession, but execution

Vide C. 3. part 1  
Fynes Case, 13.  
Elix. Dyer 299.  
That the sale of  
Goods after  
Judgment, to  
prevent Execu-  
tion is fraudu-  
lent coven. vide  
22 Aff. 44. 50 of  
Lands. C. 10.  
part 51. 10. E.  
lix. Dyer 16. 8. 6.  
Dyer 81. H. 3. 10.  
41 Elix. in R. R.  
Rot. 447. Bax-  
ter and Brown.  
Case.



40 E.3.37.b.  
acc.3.E.4.16.  
acc.C.10.part  
118, Cheneys  
case.4 Ma. Dy-  
er 135. that  
Execution of  
damages was  
stayed, till the  
four points  
were enquired  
of.

45 E.3.19. a  
acc.  
vide C. Lit.  
331.3 Eliz. Dy-  
er 197. in Las-  
fets case.5 Car.  
in B.R. the La-  
dy Sands case.  
vide 21 Jac. in  
the court of  
Wards, See  
Edward Cooks  
case, adjudge  
acc.

was stayed of the principall and damages, untill the Collusion was ex-  
posed, P. 21 E.3.55 Judgement 149. So where he recovered by default  
in a *Solita ad Molendinum*, T. 18 E.3. Judgement 120. and it seems a  
*Quare Impedit* if the Collusion be found, the King shall have the dam-  
ages, T. 20 E.3. Collusion 34. *Quare*, So in an Assise where the Bishop  
treth upon the Villain, and a stranger put him out, and he recovered in  
Assise, damages shall be lost, for the King shall be answered of the pro-  
fits, M.41 E.3.21.

The Extent of a Statute Merchant was returned, but was not delivered,  
the Defendant doth surmise that he is Debtor to the King, and hath a  
Writ to the Chancellour reciting the same, and that being known to the  
Plaintiff continuance was made untill the Kings Debt was levied, and in  
the meantime his body was discharged, and no *Capias* issued, T.41 E.3.  
38. Execution 56.

If a man be arrested for the Debt of another, where he is also indeb-  
ted to the King, he shewing the same shall be committed to the Fleet for  
the Kings debt, although he was in another Prison before, or if the other  
will take upon him to pay the King for him, he may have the Custodie of  
him untill himself be satisfied, and afterwards he shall be sent to the first  
prison, but if a man be arrested for the Debt of another, where he is  
outlawed in an Action personall, and his Lands and goods seized for the  
King, for that it is no reason that the Debtee in such Case shall lose the  
advantage of the arrest, and it was said, if he be imprisoned at another  
suit, the same matter, upon suggestion shall be entred, and he shall have  
a Writ out of the Chancery to remove his body, 29 E.3.13. Execution 39.  
and Green said, that that is by Statute &c.

A man sued Execution by *Elegit* within the year, and a protection was  
cast for him, against whom the Execution was &c. who had not any &c.  
Yet Wilby said, because the King hath taken him and his goods in protec-  
tion, we will not award Execution without a Writ, making it  
appear that he is not in the Kings Service, M. 13 E.3. Protection 71. and  
where upon Debt recovered, and the Judgement affirmed in a Writ of  
Error, the Plaintiff sued a *Scire facias* to have Execution, and the De-  
fendant cast a Protection, and upon good advise it was allowed, T.19  
H.7.8. Protection 113.

XVII. Where Execution shall be by *Fieri facias*, or by *Disseisin* and  
where a Term shall be delivered as a Chattel.

The Conusee may well plead that the Lands are extended to him, and  
that they may be delivered to the extendors, and he shall have *Fieri facias*  
against them 40 E.3.26. Execution 33 H.6.11. *Fieri facias*.  
If the Defendant be taken for the Kings debt, yet the Plaintiff shall have  
a *Fieri*

*Fieri facias* against him, 18 E. 3. Execution 54.

One made a Lease for life, rendring the first 6 years 6. quarters of Corn, and if he held over 100. shil. by the year, and this Rent was to be extended against the Lessor, and the Sheriff did not know if it were a Chattel or a Freehold, and if a Chattel, it shall be delivered and sold by a *Fieri facias*. But it was holden a Freehold, and the Sheriff amerced, because he had not delivered it, &c. But a Rent reserved upon a Lease, for years is a Chattel, and shall be extended by a *Fieri facias* as a Chattel 15 E. 3. execution 63. And by *Elegit* Term shall be delivered as a Chattel 34. Aff. 4. See in the first Case, that *Hill* Justice held it a Chattel, because it was in the election of the Tenant, if he would hold over the 6. years. *Quare* the Case.

It was holden that upon a Recognisance forfeited, execution should not be by *Fieri facias* after the year from the date of it 21 E. 3. 22. Execution 69.

One had recovered an Annuity against a Parson who is dead, and it was behind after for 2. years, & he prayed execution of the first year by a *Scire facias*, and for the later by a *Fieri facias* because within the year, but because the Parson had confessed the Action without *Aide* prayer, &c. he was driven to have a *Scire facias* against the Successor for the whole, otherwise he should have had a *Fieri facias* for the last year, 24 E. 3. 13. Execution 89. M 1 E. 3. 3. Execution. 104. 32 E. 3. Process 57.

Upon a Recognisance made to pay at diverse dayes, *Stone* awarded execution of the whole by *Fieri facias*, yet the year was past by some dayes, & against the opinion of the Clerks and other Justices, who said that of them a *Scire facias* ought to have issued out, and a *Fieri facias* of the Residue of the last year, because the year was not yet past, *Quare* this.

A *Scire facias* after the year for damages recovered in Wast, and a *Nihil* returned, he shall not have an *Elegit* until the Tenants be warned, but he may have a *Fieri facias* without warning of them, 4 E. 3. 23. Execution 99. Old N. B. 168.

The Sheriff returned upon a *Fieri facias*, *mandavi ballivo*, who said that he had seised to the value, but he could not finde buyers, and because the Court cannot send to the Sheriff to have the money here, as they might upon his own extent, therefore they awarded a Writ to the Sheriff to levy the money of the Lands and goods of the bayliff, to the value of that which he had seised, the same Law is upon a seisure of an ancient Sheriff, 5 E. 3. Execution 101.

A *Scire facias* upon a Recognisance against the heir, who being warned appeared not, a *Fieri facias* issued forth, and that was returned *Nihil*, upon which a *Scire facias* issued against the Tenants. *Quare* of what thing execution shall be by this *Fieri facias* 17. E. 2. Execution 139. for a *Fieri facias* is of goods only by Old N. B. 168.

*Fieri facias* for damages recovered in Wast upon a Lease for years, it was returned that the lessee had no goods but the remnant of the same Lease, and it was holden that by *sicut alias*, that the Sheriff might sell the Lease, as



as well as Pots and Pannes, in the Execution, for the *Fieri facias* is *in bonis & catallis*, &c. 19 C. 2. Execution 148.

A *Scire facias* the Sheriff returned, *Clericus non habet laicani summi*, upon which a *Fieri facias* issued *de bonis Ecclesiasticis*, to the Bishop, yet the Party was not warned 19 C. 2. Execution 151. Vide C. 4. In *Palmer's Case*, the Sheriff may sell a Tenure upon a *Fieri facias*, but doth misrecite the Terme in the date, it is void, but if he sell all the Interest which the Party hath in it, the sale is good, and see there 20 E. 1. *Sr. George Sidmors Case*.

If one who hath an Annuity be debtor to the King, he shall have the same *Fieri facias* without other suit, so of a Rentseck, otherwise if he be a common person, 8 H. 5. 4. 28 H. 6. 11. *Fieri facias*.

A *Fieri facias* to the Sheriff to levy the expences of the Knights of the Parliament, the Sheriff may sell the beasts of one of the hundred for the whole, or the beasts of any body he shall finde within the Precinct. 11 H. 4. 2. *Avowry* 52.

In debt for damages recovered in a special Affise, the Defendant shewed, how that at another time, the Sheriff had levyed the debt by *Fieri facias*, and deliverd to the plaintiff, and it was holden no plea without shewing an Acquittance, because the Writ is to have the money here, and in a special Affise the Sheriff, when he hath levyed, &c. ought to deliver the money into the hands of the Justices, and if it be a general Affise he must bring the same at the next Sessions, 11 H. 4. 58. *Burr*. 183. And where the Sheriff said that he had payed the Party, it was said it was no good plea, because he ought to have the money here, 13 H. 7. 1. *Quare*, and where the Sheriff said so, and that he had an acquittance of the Party, who moved that he had not payd him, the Sheriff was amerced, and an *Alia* awarded. T. 12. E. 3. *Averment*. 41. *Quare*, for the Law is otherwise in *Writ facias seisinam*. 44. E. 3. 11. 3 E. 4. 22.

In a *Scire facias*, it was pleaded, that the Sheriff had levyed the money by *Fieri facias*, and it was said, that the Plaintiff or defendant (as the Case lay) might have an Action of Trespass against the Sheriff who hath levyed the money and keepeth it in his hands, and 13 H. 7. 1. that account against him) but afterwards *Paston* conceived that the Plea was not good, that he had levyed the money without shewing an Acquittance, or without Record, 20 H. 6. 27. and 28. See according 19 E. 3. *Scire facias* 120. *Paston* said, that it is not like to a *Capias ad satisfaciendum*, where precisely by the taking of the Party he is in execution.

The Sheriff returned upon a *Fieri facias*, that he had levyed the money, and that he hath the same in Court, whereas he had not the money that day, and then a new Sheriff is chosen, and because it was upon Record that the old Sheriff had levyed the money, a *Scire facias* issued forth against him to pay it, and if he cannot, or will not otherwise discharge and pay the money, the Party shall have a *Fieri facias*, or an *Elegit* against the Sheriff of his proper goods, 9 E. 4. 50. *Scire facias* 2.

XVII. Where one Defendant may take Execution for the Plaintiff against his Companions.

Where two were bound in Statute, and execution sued against both, the one was taken and his Land delivered, he had a *Capias* for the Plaintiff against his Companion to be Partner of the Charge, because the execution at first was sued against them both, *M. 16 E. 3. Execution 43.*

A *Scire facias* for damages against two attainted of Disseisin, the one was returned dead, and the other warned. *Seton* said, he who appeareth is privy to the wrong for which, &c. and no heir nor ter-Tenant is sued, which if he were the one shall not answer without the other. And upon a Statute Merchant against two, one being taken the other also shall be arrested upon his prayer, for the debt is in common, but afterwards because the Court would not have adjourned the Parties upon the execution, the Plaintiff took a Writ against the heir, and the ter-Tenant of the other, *M. 19 E. 3. Execution 81.*

Where 6. were bound in a Statute, and the Lands and goods of two of them were delivered, they had a Writ to the Sheriff to deliver the Lands and goods also of the other four, he returned that they were not to be bound, and the Plaintiff did not come to have deliverance, now the portion shall not be delivered to the two in execution to help them, but a *Scire facias* shall issue forth against the conusee to take the portion, or to discharge the two for that portion, *H. 29 E. 3. 7. Execution 155. T. 29 E. 3. 38. Execution 156.* and it was holden that he ought to help himself by *Audita querela*, and without that, that he should not have a Writ against the others to be discharged, *33 E. 3. Execution 38.*

XVIII. Where Execution shall be by Habere facias seisinam.

A *Habere facias seisinam* upon a Fine of grant and render, at the pluries, the Sheriff did return *mandavi ballivo*, who did nothing because the fines to the fine had nothing, and the Writ of Covenant was not returned in the Liberty, nor came to him to be served, upon which a *Non omittitur* was awarded, *8 E. 3. 12.*

Upon the like Writ the Sheriff returned, that he could do nothing of the resistance of J. R. and others, and he was amerced 20. marks, because he did not take *possession*, and an *Alias* awarded, and also a Writ to arrest J. R. who was taken, & pleaded not guilty, and prayed a Writ against the Sheriff to answer his false return, *H. 19 E. 2. Execution 147.*

Habere.



*Habere facias Seisinam* of the place wasted and found, &c. And *Fieri facias* for the damages, and the Sheriff returned that he had not goods, that none came to him to take the Seisin, a *Sicut alias* issued of the Land. *Fieri facias* shall be general, but by the Writ that Sheriff ought to take the residue of the Term of the same Land, if the Defendant be possessed the same, and the *Fieri facias* general, although that the Plaintiff demurs, mise that the Defendant holdeth the residue of the Land, P. 19 E. 3. Execution 148.

Resummons in a Writ of Ward, where it was found for the Plaintiff *Nisi prius*, and Judgment given in the common Pleas, that he should recover damages, and it was found that the Infant was within age, but the Infant was not entred, and now after Judgment the Plaintiff prayed that it might be entred, and so it was, & he had a Writ to have seisin as if Judgment had bin that he had recovered the Ward, and yet here such Judgment shall not be given, nor entred now, T. 30 E. 3. 11.

XIX. Where Execution shall be by *Capias*, and where upon *Non est inventus* returned, and where the Party shall be imprisoned, and where at large before the debt be paid.

**I**N *Ex gravi quarela*, it was found for the Recognisee, and execution awarded into diverse Counties, so as to the Sheriff of L. a Writ issued to do execution of a certain Party 15. 20. l. which the Plaintiff did impound the Defendant had in L. and to take the body until the debt be paid, and he was taken by force of that Proces, and it was conceited, that if he were 20. l. that the Sheriff had not power to keep his body longer, but yet when he is at large, the Sheriff of another of the Counties may take him upon H. 16 E. 3. Execution 49.

Green said, that he had seen, where two had bin condemned in Damages, and taken, and the one dyed, that the other payed a Fine before agreement, and went at large. *Bank-Justice*, that is no Law, 19 E. 3. Execution 61. he who is taken for a Fine is also in execution for the party, if he will disagree and sue forth another execution is by *Fieri facias*, &c. and presently upon that sued he may pay his Fine and go at liberty, 13 H. 7. 1. d. 14 H. 7. 28.

But if he otherwise go at large, the Party not satisfied, it is an expense to the Gaoler, yet if he had dyed in prison, for such Fine a *Scire facias* layen against his Executors, M. 7 H. 6. 6. and 7. and F. N. B. 246. in execution by *Capias* and dyeth, that the Plaintiff shall have a *Fieri facias* against his goods.

Upon execution of a Recognisance sued, and *Non est inventus* returned, execution awarded of the Residue, 15 E. 3. Execution 63. so upon Merchant upon such return execution shall be of the Land, 49.

15 H. 7. 5. a. ac.  
21 E. 4. 80.  
Vide C. Lit.  
131. when the  
King is entitled  
to any Fine or  
d. 14 by the fine  
of the Par-  
ty, the Subject  
shall be first sa-  
tisfied before  
the King.  
Vide 14 b. 7.  
1. acc.  
4 E. 4. 39. 47  
E. 3. execution  
4. he may b. v.  
legis.

Upon a Statute Merchant a Man shall have *Capias* into one County, and his Body and Process into another for the Land, but if it be confessed the Defendant is also indebted to the King, a *Capias* shall not issue to the Party till the debt of the King be levied, 41 E. 3. Execution 38. And *Capias* upon a Statute, If the Sheriff return *non est inventus*, and upon Certificate he is taken upon a *Capias*, this is without Warrant, yet the Party shall not be set at liberty, 28 E. 3. 91. Execution 93. 148. A feme covert being a Disseiseress with force was imprisoned. 26 Aff. 7. Execution 16. and P. 8. Aff. execution 117. not so by her Plea.

A *Capias* doth not lye for Damages recovered in Dower, nor upon non est where a *Capias* doth not lye in the Original, 8 E. 2. Execution 164. But where the Party was imprisoned for Damages recovered in an Aff. 18 E. 2. Affise 82. but that seems not to be Law, as it appeareth 14. and 15 H. 7. 5. and 13 H. 6. 20. where upon a Disseisin found with force, a *Capias* for the Kings Fine was granted at the Prayer of the Party, but not a *Capias* for execution, Process 97. and a *Capias* lyeth for Damages recovered in a Re- disseisin, but this is by the Statute, 6 E. 4. 4. And for the Affise see 15 H. 7. Execution 153. A man shall not have a *Capias ad satisfaciendum*, but where *Capias* lyeth in the Original, 11 H. 9. 18. Vide C. 3. Part. Sr. William Herberts Case 8 E. 4. 22. acc. 16. 9. 31 E. 4. 22. acc.

2 H. 2. Execu. i. on 263 acc.

A man shall not have a *Capias ad satisfaciendum*, but where *Capias* lieth in the original. 11 H. 7.

18. Vide C. 3. part, Sir William Herberts Case.

8 H. 6. 9. 12 E. 4. 22. acc.

## XX. Where, and how Execution shall be after the Record removed by Error, or otherwise.

Record was removed out of the Common Pleas at Dublin in Ireland, and it was moved, that it should not be removed out of Ireland if not by default of the chief Justice there, and that Plea was never before him, and therefore it was holden that it should be sent back, and if the Plaintiff will not sue to send it back, the Defendant shall not, but he may have execution in Dublin, for the Record doth remain in the Roll 7. E. 2. error 89.

A man sueth a Writ of error, and a *Scire facias*, and is *Non suit*, now if he had not a *Super sedas* before, he shall have a new Writ of error, *Scire facias* and *Super sedas*, but if he had, Execution shall be awarded, yet in error if the Writ abate by the demise of the King, he shall have a new Writ of error and *Super sedas*, so if it abate because he is made Duke, Bishop or Knight. Where this, the same Law in an *Andia querela*. Vide 7 H. 7. *Super sedas* 7.

A *Scire facias* upon error, and he did not appear at the day, for which he sued a *Scire facias* for execution, the Plaintiff in error did not appear, and upon a *Capias ad satisfaciendum* against him, he brought a new



writ of Error, and prayed a *Superfedeas*, and prayed to be delivered, whereas he was taken, because he had not a *Superfedeas* at the time, he cannot be delivered, for then the party hath no remedy; otherwise it had been if he had not been taken, *H. 2. H. 7. 12. Superfedeas 5.* but where a man was outlawed, and a writ awarded to seize &c. if he bring a writ of Error he shall not have a *Superfedeas*, because the King is party by mean, *8 H. 4. 5. Superfedeas 19.*

VVhere the party is ousted in Execution, or making default upon the *Scire facias*, which he himself sueth, or doth not appear, there he shall not have another *Scire facias*, *5 E. 4. 2. acc.*

If a man bring an *Audita querela*, and hath a *Superfedeas*, and after is non suit, he shall have another *audita querela*, but not another *Superfedeas*, *21 H. 6. 34. b. acc.*

**XXI.** Where upon Execution against two, the Sheriff may do Execution of the Lands or goods of one, and when he delivereth more Lands or goods then his commission what shall be done and where he may make Partition upon an Extortion.

**VV**Here upon a *Scire facias* against two attainted of disseisin, the Sheriff returned one dead, the other warned, it was holden he might have levied the whole of the Survivour, *19 E. 3. execution 31. 34 H. 6. 37. and 35. H. 6. 27.*

A man doth recover in value against two, and hath a writ of execution, the Sheriff doth deliver all the Lands which one had at the day of the execution in a strangers hand unto the value of the Land, the stranger hath no remedy to extend the Lands of the other. *Quare*, for it seems he shall not have an assise, *H. 12. E. 3. execution 15.*

Upon a Statute Merchant, the Plaintiff may well refuse parcell of the Land so be delivered unto him by the Sheriff, and shall have a writ commanding him to deliver the whole Land, *M. 22. E. 3. 14.*

VVhere in Dower the Sheriff doth deliver to his wife upon her suggestion the moiety of the Land, the other may have a *Scire facias* against the wife, to shew why it should not be recovered, and shall not have an Assise by *Skrene*, *22 R. 2. Dower 165.*

One sued *elegit* upon a Recognisance, the Recognisor alledged that the extent was too low, and prayed a re-extent, and had a *Scire facias* against him, and now he doth also alledge that the Sheriff delivered him more than the moiety, it seems he need not sue a *Scire facias* upon this, but shall have a re-extent upon the first matter, and it shall be no issue, if the extent were well made, but he shall not have Assise of that &c. for *elegit* he might deliver the whole by the name of the moiety, *T. 15. E. 3. execution 17.*

On Parcener doth recover in an Assise against the other, and prayeth to hold in severalty, and Judgment was given accordingly, but although the Judgment had not been such, the Sherif might deliver the moiety in severalty, at his pleasure, and here it is said that a jointenant cannot have Judgment to hold in severalty T. 12 E. 3. Judgment 162.

**XXII. Where Execution shall be of the arrearages incurred hanging the Writ, and after the Verdict.**

IT was found for the Plaintiff in Assise of Rent, and adjourned for difficulty of the Verdict, and being afterwards adjudged for the Plaintiff, he did not recover the arrearages and damages, and also his damages after the Verdict, 31 Ass. 31. Assise 308.

**XXIII. Where Execution shall be sued of a thing whereof no Judgment was given.**

RECOVERY of a ward, the Judgment was given to have all in damages, and upon a suggestion the party had a writ of execution for the body of the ward also, 30 E. 3. 11.

**XXIV. Where Execution shall be upon a Scire facias returned by the Testatum est, without a sicut alias, and where he shall have Execution at his perill.**

A Scire facias for damages recovered against two, upon Nihil returned a Sicut alias is awarded by Testatum into another County, and the one is returned warned, and that the other hath nothing, the Plaintiff shall have Execution at his perill, and it is so from the Scire facias by Testatum in this case from the Scire facias sicut alias in the same County, and upon Nihil returned at the Sicut alias it is clear that execution shall be awarded, 18 H. 6. 17. execution 3. but if at the first one was returned warned, and the other Nihil, he ought to have a sicut alias, or Testatum in another County &c. but he shall not have execution upon the Testatum est returned &c. H. 8. H. 3. 4. execution 22. 24 E. 3. 20. Scire facias 144. See it is said, that for Debt or damages



damages a man shall have execution upon the first *Scire facias*, *14 E. 3. 25.*

*Scire facias* upon a Recognizance against two, one is returned, the other *Nihil*, an *Alias* awarded, and *Idem dies* given, but he answer at the *Alias* returned, otherwise execution shall be, *20 H. 7. 3.*

Upon generall Non-tenure plead in *Scire facias* upon a Recovery, execution shall be at the perill of the demandant, which shall not be in a *Scire facias* upon a Fine &c. *11 H. 4. 16. execution 26.*

In a *Scire facias* for damages recovered, upon *Nihil* returned, Process may issue forth by *Testatum*, *1 E. 3. 4. execution 105.* And note, that the first day he may have a *Scire facias* by *Testatum* into another County if he will, *1 H. 5. 4. execution 22.*

**XXV.** Where Execution awarded for the King, shall be the said Execution for the place, where not.

*7 H. 6. 14. H. 7. 28. acc.*

**W**ithin the year in Trespasse, Execution for the Kings Fine in Execution for the party, and if he go at large it is an escape, but if the party be taken by a *Capias pro Fine* after the peace, it will not help the party, nor in no case where he is put to a *Scire facias* for his Execution, and if he dieth within the year, the Defendant taken for his Fine, shall not be in execution for the Executors &c. *3 H. 6. 24. execution 92. 1. execution 16. 22. Ass. 74. execution 111.*

*Vide 4. E. 4. 16 and 12.*

*Capias pro Fine* against a man condemned in redisseisin, he was taken and was afterwards outlawed of Felony, the King pardoned him all Felons, and it was holden that at the prayer of the party he shall yet remain in Prison at his execution; but if he were in execution for the party and afterwards outlawed of Felony, and pardoned, the execution is extinct, because once discharged before; but here he was not in Execution for the party at the first, wherefore &c. and now he is enabled to be in execution and to answer &c. *6 E. 4. 4. Execution 13.*

*13 H. 7. 22. b. acc. 14 H. 7. 15. 14 H. 7. 19. 1 H. 7. 20. 36 H. 6. 25.*

See that Execution in this action is, only by the Statute, and shall be without prayer; for in all Actions the Execution of the King for Fine shall not serve the party where *Capias* doth not lye in the original or for the execution, *14 H. 7. 28. 15 H. 7. 5. 13 H. 7. 21. 9 E. 3. execution 92.* also the same will not help the party within the year, in case where he could not have *Fieri facias*, *15 H. 7. 5. execution 115.*

*C. 3. part. Sir William Herberts Case. acc.*

If the Record be removed by Error within the year, and the Defendant taken for the King, the same shall not help the party, because he is put to a *Scire facias*: so if the party be adjourned from the Court into the Common Pleas within the year; but if all the Justices be removed, and others chosen, Execution for the King is not for the party, *14 H. 7. 15. 15 H. 7. 6.*

And it was said where he may have *Fieri facias* although *Capias* doth lie in the Original, setting him at large is an escape, although the prisoner hath a pardon, or hath payd his fine, 2 R. 3. *execution* 16. But after the year the Gaoler may let him at liberty, if the party do not pray that he remain in prison: and it was there said, that the Plaintiff shall not have a *Capias* within the year against him who is taken for the Kings fine. 7 H. 6. 5. *De* 13. H. 7. 21.

Note, the *Capias* for the Kings fine is, *ad respondendum tam nobis quam patri quocumque*, if it be to be intended within the year, 7 H. 4. 4. *Execution* 110.

But if the King pardon the Defendant his fine before he be taken for it, or wills that a *Superseatas* be awarded before, &c. this is a good discharge, so as the Party shall not have advantage of the Kings fine, if he be not taken for the same before, 4 E. 4. 16. and 22.

Note, that although the execution for the fine, be an execution for the Party without prayer, and that he may have debt against the Gaoler who lets him at large, although it be by the Kings commandment, yet the Party after may take an execution against him being at large by *elegit*, or *Fieri facias*, or by *Capias* at his pleasure, for he is not otherwise compelled, yet without his agreement the Gaoler cannot dismisse him, by *Pigor*.

If the Plaintiff sue an *elegit* after the Defendant is taken for the Kings fine, he shall go at large, for such execution doth discharge the body, 7 H. 6. 6. and 7. So if he sue by *Fieri facias*, &c. 18 E. 3. *Execution* 54. yet upon Nihil returned he may have a *Capias*, &c.

If three are condemned in debt or trespass jointly, and the one is taken only for the Kings fine which the King may do by his Prerogative, the same is no execution for the Party, because the King doth not sue according to the Original, as the Party of necessity must, 15 H. 7. 5. *Execution* 99. So if 3 be attainted of disseisin, &c.

XXVI. Where Execution upon a Fine shall be awarded, and where he shall shew Cosenage before Execution, where not, and out of what Court Execution shall issue.

Na *Scire facias* upon a Fine as Cosin and heir, if the Tenant make default, the Demandant shall have execution without shewing how Cosen, 4 H. 6. 44.

If a Fine cometh into the Kings Bench by due Process, the Party may have execution there, 5 H. 5. 1.

No execution upon *Nontenure* pleaded in a *Scire facias* upon a Fine, be general or special, because the Right is not yet tried, 11 H. 4. 16. *execution* 26.



No execution upon a Fine until a *Scire facias* served, 8 E. 3. 12. execution 95.

Upon a Fine leyved here of Lands in *Norwich*, and a *Scire facias* brought, they shall have Conusance, and a Transcript of the Fine shall be sent to them, 8 E. 4. 6. *Conusans* 13.

If a Fine leyved of a Rent-charge or a Rent-service, execution may be sued by *Scire facias*, yet some think that it cannot because it doth not passe by Levery, &c. but Attournement, and the Render, if the Fine be engrossed, but before the engrossment he may have a *Quem redditum reddit*, or a *Per que servicia*. But it was holden that a *Scire facias* lyeth to have seisin, and *Quem redditum reddit*, gives but attournement, and no seisin, and if a man do recover in Customes and services, or if a Fine be leyved of services, the Sheriff shal do execution by distress, 17 E. 3. 34 *Scire facias* 8. and 16. See 16 H. 7. 9. and 48 E. 3. 8. &c.

A Fine was sent into the Treasury not engrossed, yet it was a good Fine, and executory, but the Party shall not have a *Quid Juris clamat*, nor a *Quem redditum reddit*, nor a *Per que servicia*, after the Fine engrossed, 22 H. 6. 13. *Scire facias* 31. C. 5 Part. *Teys Case*, acc. Vide F. N. B. 147. a.

XXVII. Where Execution shall be sued by *Capias* against him who was taken before, and in Execution by his Bodie.

**A** *Capias* was awarded against him, who had found bail to the King where he was outlawed and taken for the Kings Fine, and is now at large, 8 H. 7. 9.

One being in execution in *Newgate* found mainprise by Recognizance in Chancery, and brought *Audita quarela*, and did not appear, and afterwards the Mainpernors arrested him and put him in the Fleet, it was holden that the Mainpernors might choose to have execution of his Body and Lands, 50 E. 3. 12. execution 43. So if a Man condemned and imprisoned for the Kings fine escape, an Action lyeth against the Gaoler, or a *Capias* against the Party, 7 H. 6. 5. and 6.

One being in execution in the Kings Bench escaped, the Gaoler dyed, his executors shall not be charged, for which cause a new *Capias* was granted to the Party: 41 Ass. 15. executors 100. See contrarie, that he shall not have a new *Capias*, for the Bayliff cannot take him again but upon fresh suit, but by such way, if he out of his sight, 14 H. 7. 1. 13 E. 4. 9. &c.

XXVIII How Execution shall be when Lands are extended by a later Statute, or for a Debt recovered after, &c. or where a second Execution shall be upon the first defeated.

**T**enant by Statute Marchant shall not sue him who hath execution by a later Statute without Process of Law, &c. so neither Tenant by *elegit*, and the process against them shall be *Venire facias*, not *Scire facias*, because there is no record upon which, &c. And this was upon *Non est inventus* returned, and that the Land was delivered to ? upon a later Statute, 9 E. 4. 24 execution 37. But it is clear, that he shall put him out upon the matter, 19 E. 3. Execut. 25. 22 E. 3. 7. *Scire facias* 126. And there he shall have *Scire facias*, and not *Venire facias*.

He which hath a later Statute, sheweth that the Term of the first who hath execution is expired, and the whole money levied, and the Connusor would not sue to have the Land delivered back, and prayed execution against the first, and shewed an Acquittance of all but 6. l. long before, &c. he prayed execution at his peril, and had a *Scire facias* against the grantee of the first Connusor, for without Process he shall not put out him who is in by Judgement, 38 E. 3. 12. 22 E. 3. 7. *Scire facias* 126.

The executors of him who had execution by Statute were ousted by another who had a later Statute, and had a *Scire facias*, notwithstanding the execution before had against the later, for the Iustices were deceived, and an *Affise* doth not lye, 19 E. 3. *Scire facias* 12.

A was bound to B. in 100 l. by Statute staple certified in the Chancery, 4 Hen. 4. and afterwards 39 H. 6. A Stranger entred upon him by grant of the King, and afterwards the Connusor in whose right, &c. dyed, so as the Connusor could not take the profits, upon which suggestion, he had a new *Capias*, where he was taken upon a *Capias* before, but this upon another Certificate 2 H. 3. 7. Execution 16.

If the Defendant be taken in *Capias pro fine* in Trespass, and the Plaintiff pray that he may remain in prison for his execution, the Plaintiff notwithstanding shall have an *elegit* afterwards, so if one pray an *elegit* of Lands, and nothing is returned but a Rent, he shall have an *elegit* of the same, 47 E. 3. execution 41. See F. N. B. 246. and Statute 32 H. 8. Cap. 5.

Note that a man shall not hold the Land over the Term by *elegit*, because the Land was destroyed by War, so as he could not take the profits, M. 19. B. 2. execution 146.

In Dowry the wife hath judgement against the voucher, and that the Tenant shall hold the Land in peace if the vouchee doth reverse the judgement by disceit, because he was not summoned, and hath restitution, the wife shall have a *Scire facias* against the Tenant to have execution against him, 3 E. 3. 49 4 E. 3. Disceit. 45.

And.



And if a man hath execution in value against the vouchee of Land which he hath by disseisin, and the disseissee entreth upon him who recovereth, he shall have a new execution in value, 30 E.1. *Voucher* 297.

*Elegit* was upon a Recognisance at the first day, when there were several dayes of payment, *F.N.B.* 267.

29 Where a man shall be put to a *Scire facias* to have Execution, and where not.

**A** Recognisance to appear such a day, and to keep the peace, and he doth not appear, yet execution shall be granted without a *Scire facias* 36 H.6.17. execution. 10. Otherwise it is within the year upon a Recognisance to appear. See how the year shall be accounted, *M.* 21 E.3.22. Execution 69.

If the Recognisor alieneth his Land, no execution shall be without a *Scire facias* against him, and the alienee, 7 E.3.31. Execution 53. and 9 E.3. Execution 97.

It was holden, that an executor shall sue execution of a statute staple, or Merchant without a *Scire facias*, but not of a Recovery of the Testator, &c. 15 H.7.1.6. But whereupon a certificate of a Statute Marchant *Non est inventus* is returned, and the Connusee dyeth, his executors shall not have execution upon the first return without a *Scire facias* out of the Certificate, 18 E.3. Execution 55.

The Party is alwayes put to a *Scire facias* upon Recovery of Debt, Damages or Annuity, after the year, 24 E.3.23. Execution 89.

Execution sued of a Statute Marchant, and the Recognisor returned dead, execution shall be against the Feoffee without a *Scire facias*, and if one Conusee be testified dead, the other shall not have execution, but shall be driven to sue in Chancery upon his Case, 25 E.3.38.

And *Fitzh* saith *N.B.* 167. that upon a Connusor returned dead, no execution shall be against the heir, executor, nor ter-Tenant without a *Scire facias*.

But see that upon a *Capias* of a Statute Merchant, and death of the Connusor, or *Non est inventus* returned, execution shall be without *Scire facias*, but if the Sheriff upon it return, that one hath the Land by judgement, he shall not put him out without process, and that shall be *Venire facias*, and upon that a *Distringas*, and not a *Scire facias*, because it is not upon Record, 9 E.3.24. Execution 97. 1 E.3.4.22 E.3. *Scire facias* 126.

In a *Scire facias* after the year against the Connusor & he returned dead, execution against the heir by *Scire facias*, and it was upon a Recognisance to keep his day, 5 E.3. execution 100. and he shall not have *Fieri facias* of the goods of the dead although within the year, but a *Scire facias* against the heir, and Executor, 18 E.2. execution 143. So in this case it shall be against the ter-Tenant, 20 E.3. *Scire facias* 121.

*Scire facias* upon debt or damages recovered after the year, the Defendant returned warned, doth not appear, no execution shall be against the Feoffee living the Principal, of Lands which he had at the time of the judgment without another warning against the Feoffee, but the Reporter conceives that the execution shall be without warning, 1 E. 3. 4. execution 105. So not against executors 19 E. 2. execution 243. 9 E. 3. 24. and 6 E. 3. 15. execution 102.

Where Land is extended by statute Merchant or staple, *Scire facias* doth lye to have restitution within, or after the Term, not otherwise. 19 E. 2. execution 164.

When a Record is removed into an other Court, as by error into the Kings Bench, a *Scire facias* shall issue before execution within the year, 21 E. 3. 56. enquest 7.

If the Plea be holden in the County, and afterwards, the Justices in Eyre come into the Conty, they shall award execution upon the judgment given by the other Justices within the year without *Scire facias*. And Justices of Gaol-delivery shall award execution against a Prisoner who was outlawed, or indicted before Justices of the Peace, 15 H. 7. 5. execution 153.

The first Conusee, shall not put out the other without Proces of Law, 9 E. 3. execution 97. enquest 11.

XXX. Where Execution upon *Scire facias* shall be upon Nihil returned, and where he ought to have Sicut alias.

Brian saith, That the course of the common Pleas is to have execution of Debt, Damages, or Annuity, upon a *Nihil* returned at the first *Scire facias*, 2 H. 7. 3.

A *Scire facias* against two upon Damages recovered and *Nihil* returned, and upon the *Tesatum* one was returned warned, and the other *Nihil*, and execution awarded, 18 H. 6. 17. execut. 3.

In a *Scire facias* upon a fine he shall not have execution untill the Party be warned if it be upon debt, or damages, and upon 2 *Nihils*, And Hill Justice said, that of Land execution shall not be until the Party be warned in no Case 18 E. 3. execution 57. 4 E. 3. 23. execution 99. acc.

*Scire facias* upon a Recognisance against two, one is returned dead, the other warned, execution shall be against the Survivor without a *sicut alias*, if he will, 13 E. 3. execution 78. But no execution against the ter-Tenant until the Comor be returned *Nihil*, 28 E. 3. 32. execution 158.

Upon *Nihil* returned in a *Scire facias* for damages, *Fieri facias* awarded, but *Elegit* of land not till the Party be warned, 4 E. 3. 23. but at the first *Nihil* returned the party may pray a *Scire facias* against the ter-Tenants of the Lands, and if they are returned warned, he may have the Land by *Elegit*. 6 E. 3. 15. 24. E. 3. 25. *Scire facias* 128.

He who recovereth damages in an Assise against three shall have a *Scire facias*,  
H h h



*facias*, and two were returned warned, and the third *Nihil*, upon which he had Execution against the two, 1 E. 3. 13. Execution 106.

The Defendant in a *Scire facias* was returned, Clerk not having any Lay-Fee, and a *Fieri facias* issued *de bonis Ecclesiasticis* awarded to the Bishop, although he was not warned, 19 E. 3. Execution 151.

Where two were returned *Nihil*, and the third warned, a *Scire facias* by *Testatum* issued against the two into another County, and *Nihil* returned against them; then the third appeared and would have pleaded and could not, for Execution should have been awarded, if the two had not been returned *nihil*, so that the Proceſſe was not ended against them, for which the partie ought to stay untill the others be warned, or the Proceſſe ended, as it is at the second *nihil* returned, 2 E. 3. 30 *Scire facias* 141. 1 E. 3. 13.

### XXXI. How he who is in Execution shall be discharged, and by what act.

**I**F one be in Execution by his body, and the party doth release unto him all Actions, Suits and duties, he shall not have an *Elegit* nor a *Capias*, because the duty is extinct, 26 H. 6. Execution 7. and the Release to one, and the saying of the plaintiff in Court, that he will not have Execution against one, the same doth discharge all, 15 E. 4. 5.

Vide 33. H. 6.  
47.

If I purchase a Mannor to which he who hath recovered a Debt against me is Villain regardant, and alien the same again, now he may well sue execution against me, yet it was once suspended &c. 12 H. 4. extension 28.

If a man take execution by part in diverse Counties, and the party is taken in one, and he payeth that part, yet it is no discharge of the residue, 16 E. 3. Execution 45. Yet if the Sheriff had taken him by Proceſſe, before the apportionment, as at the first *Capias* upon a Statute Merchant, there he might keep him in prison, notwithstanding of payment of the part made after, *ibid*.

If a man hath the body in execution for damages, the party may come seven years after, and acknowledge agreement made with him, and the other shall be discharged without *Scire facias* or other proceſſe, the same Law upon a Recognisance or Statute.

See that a Recognisance, or Statute made, commencing without proceſſe, wherefore it may be well discharged without proceſſe, and so not hinc into a recovery which is by proceſſe, 30 E. 3. 18. Suggest. 13. yet there he shall go quit in the one case and in the other.

See in a Note, 10 H. 4. 3. That if the Plaintiff cannot come in Court to acknowledge agreement made upon damages recovered, the other may have a Writ to another man to take his acknowledgement.

One was in the Fleet for execution of a Statute Merchant, and afterwards he brought an Appeal of the death of his brother, and was committed to the Marchalkey, because this is in the Kings Bench, and this is a discharge of the Execution, 18 E. 3. Outlawry 47. And a man condemned in the Vacation was in Execution in the Term, and removed by writ of privilege, because of a Plea depending in the Common Pleas, and was set at liberty, that was an erroneous Judgment, but the party had no remedy, 3 E. 4. 8.

One came by *Capias utlagatum*, and pleaded a Plea which was naught, and found Mainprise to pursue it, and at the day did not appear, upon which a *Capias* for the Kings Fine was awarded against the Mainpernors, and a *Capias utlagatum* against the party, 2 E. 4. 11. Outlawry 33.

If a stranger recover the Land of the Recognisor, yet the body doth remain in prison, but if the Recognisee doth surrender unto him, that discharges his body also, 15 E. 4. 5. and see there that he shall be discharged by a *Habeas Corpus* sued, and upon that a *Scire facias* fol. 6. 12 H. 6. 36. ac.

XXXII. When a man who is in Execution shall be removed, and afterwards remanded, and when not.

A man outlawed for debt was afterwards condemned for the same debt by plaint in London, and sent to Newgate, and afterwards had a Pardon and *Scire facias* against the party, upon whose default the pardon was allowed, and it was holden, that he should be sent back to Newgate, yet he shewed an acquittance of the Debt, but the same should have been pleaded there, 48 E. 3. 22.

A man in Newgate for execution of a statute merchant had *audita querela*, upon acquittance found and special bail, afterwards he made default, & the Bailiffs took him and put him into the Fleet, the party may choose his Execution against the party, or against the Bail, 51 E. 3. 12. and he chose execution against the party, & prayed that he might be sent back to Newgate, & it was holden that could not be, but he should continue in the Fleet until &c. because he was in Newgate for that cause only 50 E. 3. 12.

One in execution in L. for Trespasse &c. was sued in an action of Accompt here, and appeared in Custody, and acknowledged the Receipt, and it was holden that when hee hath accompted and made agreement he should be sent back, afterwards the Plaintiff did acknowledge agreement made, and he was sent back, 29 E. 3. 47. Execution 160.

A man in Newgate for Execution of a Statute, had *Audita querela* here upon a default, and they were at issue here, and afterwards he was Non-suit here, for which cause he was sent to the Fleet, and not sent back to Newgate, because he was in the custody of this Court upon the removal &c. 38 E. 3. Execution 161. 41 E. 3. *Audita querela* 18.



One condemned in Trespasse in the Kings Bench was also condemned in London, and sent to Newgate, and upon a *Capias ad satisfaciendum* awarded from hence, the party acknowledged himself to be satisfied, upon which it was holden that he should be sent back to Newgate for the debt there, 8 H. 5. 7. execution 167.

XXXIII. How he who acknowledgeth a Statute or a Recognisance, or his alienee shall have back his Land after Execution, and by what Action, and where by Entry.

**T**He Land of a man was extended upon a Statute Staple of 100 l. and by the extent returned, it appeared that the Land was of 100 l. by the year, and so was delivered, now after the year past, the Conusor shewed the same in the Chancery, and had a *Scire facias* without any other surmise, but if he come within the year, and sheweth that the Conusor is satisfied by any casualty, the same must be specially alledged, otherwise he shall not have a *Scire facias*, or that he hath tendred the Money, and the other refused it, and that now he is ready, because it is not intended satisfied till the Term end, and note, that after the year past, the party shall not have back his Land without a *Scire facias*, for it may be that the Conusor hath cause to hold over the Term, but see the opinion was after that if the Conusor had levied the money after the Term, the other should enter without a *Scire facias*, 2 H. 3. 7. Execution 17. and see P. 32. E. 3. *Scire facias* 101. agreeing in every point, and there it was a Statute Merchant.

But 15 H. 7. It was holden that he should not enter after the Term without a *Scire facias*, but after the year he shall have it without any surmise, and Townsend said, that if within the Term the Conusor put the money in Court, or shews an acquittance, that he shall have a *Scire facias*, but if he do surmise any casualty, as by cutting of the wood &c. there he shall not have a *scire facias*, but a *Venire facias ad computandum*, with a surmise that he is satisfied, 15 H. 7. 15. 47 E. 3. 11: but 22 Aff. 44. he entered upon tender of the money.

Execution of a Statute Merchant, and within the Term the Conusor shewed an acquittance of part, and tendered the rest in Court, and had a *Venire facias* against the Conusor and his Assignee, who came at the day, and the Conusor not, against whom a Distress issued forth, and *idem dies* to the Assignee, who made default at the day, and the Conusor came in the Custodie of the Marshall, and answered alone, and so he shall have a *scire facias* within the Term upon a Deed, and that against the Conusor and his Assignee, not against the Assignee alone, for he shall not answer

to the Deed, but the monies were delivered to him, so that Proceſſe ſhall be againſt him and the Conuſee, 15 E.3. *Responder*. 3. but the Feoffee put the money in Court, and had a *ſcire facias* againſt the grantee of the Tenant by Statute ſolely, and holden good, yet both ſtrangers, 46 *Aſſ*.

*ſcire facias* 134.

If Tenant by Statute Staple or Merchant granteth over his eſtate, and the grantor levieth the money by casualty, the Conuſee ſhall have a *ſcire facias* againſt the grantee onely, and if he levieth the money and afterwards grants his eſtate, it ſhall be againſt them both, 50 E.3.16. *Execution* 44.

Tenant by Statute Merchant held over his Term by two years, the Conuſor had a *Venire facias ad computandum*, and upon his default prayed reſtitution of the Land, and alſo a *Venire facias* to accompt, and he ſhall not have them both; for if he take back his Land, he ſhall not have an accompt, but the means and profits after the Term, but he may have the one or the other at his pleaſure, 18 E.2. *execution* 144.

Land was extended by *Elegit*, and after the Term ended the Conuſee came by *ſcire facias*, and ſaid that he had not levied all the money, becauſe the Land was impaired by reaſon of warre, and this was holden no plea to retain the Land &c. 19 E.3. *execution* 146.

Upon Execution ſued againſt one Feoffee of the Conuſor of a Statute, he ſued an *Audita querela* againſt the other who appeared and ſhewed an acquittance of the Conuſee, upon which the firſt had a *ſcire facias* againſt the Recogniſee to have back the Land, and to answer to the Deed, 47 E.3.4. But note the *Audita querela* iſſued from the Common Pleas, and upon that from thence iſſued *Venire facias* againſt the other Feoffee, who appeared and pleaded a Release, 45 E.3.17. *Audita querela* 19. and *Venire facias* alwayes iſſueth out of the Common Pleas, 11 E.4. *acc*.

And note that one Feoffee ſhall never have a Writ to deliver the Land of the other *pro rata*, without ſuing an *Audita querela* againſt him, for every one ought to answer, but the Conuſee may ouſt all the Feoffees without answer if he will &c. 33 E.3. *Audita querela* 38. but upon a Recogniſance acknowledged in the Common Pleas, one Feoffee ſhall have a *ſcire facias* without ſuing an *Audita querela*, 45 E.3.24. *execution* 40.

*Vide* 13 H.7.  
22 b. *acc*

If he who hath Land extended by *elegit*, hath cauſe of re-extent &c. upon ſuggeſtion thereof, he ſhall have a *Venire facias*, and not a *ſcire facias* for the delay, 15 E.3. *ſcire facias* 16. and for that reaſon it was doubted if a *ſcire facias* ſhould iſſue upon a ſuggeſtion that he had a Ward fallen, by which he had levied the whole money, 15 E.4.5.

22 H.6.56. *vide*  
de & *Quare*.]

The Conuſor of a Statute ſaid within the Term that the Conuſee had levied all the money but 10 l. and that he put in Court, upon which it was holden that he ſhould have a *ſcire facias* to have his Land again, and to account as well, as upon an acquittance ſhewed, and that upon *elegit*, 47 E.3.11. *ſcire facias* 96.46 *Aſſ*. *ſcire facias* 34. *acc* 21. E.3.16.22. *Aſſ* 44. but he may enter.

47 E.3.25. *vide* 2  
44 E.3.14. *acc* 7.

He



*Vide* 16. E. 3. waſt 100 and *Quere* if be in the Reverſion ſhall have waſt againſt Tenant by Elegit. *Vide* Fitzh. 21. that he ſhall

Here the moiety of whole Land was extended by Elegit, ſhewed the money in Court, and ſaid that the other had felled ſo many trees and prayed a *Scire facias* to receive the money for to reſtore his Land, and to accompt for the trees, and here had it, but Stone ſaid, that it did not lye to accompt, but for that he ſhould have his Action upon the Caſe, and if a wood be delivered, the Conuſee cannot fell it, but he may take the Herbage, and an accompt doth not lye, becauſe it was delivered to his own uſe, 21 E. 3. 16. *Scire facias* 111. See F. N. B. 58. where he conceives *Venire facias* to accompt doth lye, and yet alſo he thinks that waſt lye.

See 18 E. 2. Execution 144. where he could not have a *Scire facias* to accompt, and to deliver the Land after the Terme, but held clear, that within the Terme he might have a *Scire facias* to accompt, and that is in the nature of a *Venire facias*, but he ſhall not have both within the Terme, becauſe he is not then intended ſatisfied: and here note, that the aſſignee had a *Scire facias* againſt the Conuſee, and that upon ſuggeſtion that he was ſatisfied by caſualty, and ſhewed how, 32 E. 3. *Scire facias* 101. and agreed that he ſhall have a *Venire facias* to accompt, or a *Scire facias* in the nature of *Venire facias* upon ſuggeſtion onely that he is ſatisfied by a caſualty, without putting the money in Court, but the ſame ſhall not be to deliver the Land, 29 E. 3. 1. And when one had ſuch Execution the Conuſor did ſuſmiſe that he had levied the whole with Coſts and charges, and 4 l. over, and prayed a *ſcire facias*, and the ſame was granted to have the Land again, but of the Profits he could not have but a *Venire facias* to accompt, and it did not appear that it was within the Terme or after ſuggeſtion, 18 19 E. 3.

A man ſhall not have a *Scire facias* within the Terme upon a ſuggeſtion that he hath paid: alſo the Lands ſhall not be delivered after untill he hath levied his Coſts and Charges upon Execution of a Statute Merchant, 29 E. 3. 36. *Suggeſtion* 15. and the Conuſee needeth not take the Money in Court, if he do not tender him his coſts and charges, 46 Aſ. *Scire facias* 134.

#### XXXIV. Of what Lands or Tenements Execution ſhall be by force of a Statute or Recogniſance, and where the Land in uſe ſhall be in Execution.

THE Lands in uſe ſhall be in Execution, by Statute, Recogniſance or Elegit. *Quere*, if that be by Equity of the Statute of 1 R. 3. before the Statute of 19 H. 7. cap. 15. 7 H. 7. 29. Execution 19.

Lands recovered againſt the Conuſor is diſcharged, but if he repurchase it, it is charged in whoſe hands ſoever it cometh after the purchase. See of the purchase of the Conuſee of the whole, or part, 45 E. 3. 22. Execution 39.

Execution upon a Recognisance shall not be granted but of Lands which the Recognisor had the day of &c. untill he be returned *Nihil*, 29 E.3.1. *execution* 158. but a Recognisance shall charge all his goods which he had at the day of the entring thereinto, 7 H.6.2.

At the *Capias* upon a Statute Merchant, the party was returned dead, the Plaintiff had a Writ for his Land which he had at the day of the Statute or afterwards, the Sheriff returned, that a stranger had the Land in Execution for damages recovered after, for which a *Scire facias* issued forth against the Recoverer, 9 E.3.24.

The brother of the Conusor gave him Land in Tail, this Land was discharged by the death of the Conusor, 5 E.3.35.

One of the two Joint-tenants in Fee is Debtor unto the King upon Record, and dieth, the other shall hold the Land discharged, but if the husband and joint Lessee for years, with his wife (being debtors to the King upon Record) dieth, the King shall have the Term in Execution against the Wife, 10 E.3.5. So of a stranger who recovereth Debt or damages against the Husband, by *Babington*, and if execution be done in the life of the husband, it is clear, he shall hold it till the whole Debt be levied, 7 H.6.2. Otherwise it is if he who recovereth hath not Execution in the life of the husband, 9 H.6.52.

Lands in ancient Demeasne are liable to a Statute Merchant, 2 E.2. and if the Conusor doth enfeof the King, the Land is discharged of Execution, *F.N.B.* 266.

Where the Sheriff returned that the charges upon the Land did exceed the Land it self by 40 s. the Justices would not award Execution, because the party should then never have the Land again, but afterwards he had other Land, so as the Land did exceed the charges 10 s. for which cause Execution was awarded of the whole, 29 E.3. *execution* 154.

One was bound in a Statute to 7 & his heirs: 7. died, his heir sued Execution against R. Ter-tenant, who brought *Andita querela*, and shewed that the Land was given to the Conusor, and to his wife in Fee, and that she did survive, and that he is in by her, and holden a good discharge, for which cause the other said that the gift was to the husband and wife, and to the heirs of the husband, and both are dead, for which &c. 25 E.3.45.

Tenant in Tail bound in a Statute dieth, the issue in Tail entreth, and enfeofeth a stranger, and it was holden that the Execution should be against the Feoffee, although the Issue himself should hold the Land discharged, 19 E.3. *Receipt* 112. and the Feoffee of Tenant in Tail shall hold the Land charged, 8 H.7.8.



XXXV. Where Execution shall be against the Heir before suing against the Executor, and where the Ter-Tenant and the Heir, and where the Land of the Heir, which he hath by purchase, shall be charged.

ONE prayed a *Scire facias* against the Heir of damages recovered in Redisseisin, and had it not without first suing against the Executors, for the Land is not charged, but in want of goods, 7 H. 31. Execution 25. But at his perill he may sue the Heir alone, or the Ter-Tenant alone, and then if the Executor hath Assets, the Writ shall abate, 19 R. 2. Execution 163. and therefore the surest way is to sue the Heir, Executors, and Ter-Tenants, although that the Heir nor Executors have nothing, 46 E. 3. 29. Brief 605. and that was upon a Recognisance.

A *Scire facias* upon a Recognisance, the party was returned dead, and a *Scire facias* awarded against the Heir and Ter-Tenant, and upon a third default *Elegit* granted, 38 E. 3. 12. Execution 30. and the Execution good. *Quare*, For in the book the Sheriff did return that there were no Executors, so there needed not, and the Execution sued against the Ter-Tenants alone good, although he had had heir, if the Ter-Tenant doth not averre that the heir hath Assets, 7 R. 2. Execution 46. and with this last agrees, 11 E. 2. Brief 266. but see before Division 5. divers books contrary, and that he ought to sue the heir and the Ter-Tenant, or the heir first, and if he do not appear at the *Fieri facias* being warned, a *Scire facias* shall issue forth, and upon *Nihil* returned upon that, he shall have processe against the Ter-Tenants, 17 E. 2. Execution 139.

The Conusee shall have Execution at his peril against the Heir of one Conusor, upon Return that the other hath nothing, if he confesse it, 3 E. 3. 35. Execution 100. and 28 Aff. 45. Execution 112. he sued Execution of damages recovered against the Ter-Tenant onely, but it doth not appear there that he had sued against the Heir before.

Where the party against whom &c. died, a *Scire facias* issued against the Ter-Tenant, who counterpleaded the Execution and found against him, yet Execution shall be of the Lands of the dead, and not of his own Lands, 33 E. 3. Execution 162. But note, it was not demanded against him, but he made default &c.

A Writ for Execution against one Ter-Tenant, where there are many, shall not abate, but *idem dies* for him, and shall sue against the others, for Execution shall not be by parcells, and the one shall not answer alone untill &c 11 E. 3. Brief 266.

A man may have one *Scire facias* against the Heir, and Executor, and another against the Ter-Tenant, or against them all together, and where a man shall name the Ter-Tenants, where not, See 46 E. 3. Brief 605.

*Belknap* said, That if the heir hath but an Acre by descent, he shall be charged

charged with 1000l. by Obligation of his own Lands, which denied that, and that onely the Land which descended should be put in Execution, 40 E.3.15. But if in Annuity or Debt the Heir plead a false Plea, as nothing by Descent &c. then although he hath but one Acre descended, yet he shall pay all the Money out of his own Lands, 5 H. 2. Annuity 21. 19 E.3. Annuity 26. But there it is said, that in a Formedon, it shall be a bare, but a half party, although that he plead, that he hath nothing by Descent, and yet hath 33 E.3. E.3. Execution 162.

XXXVI. Where Lands and Goods shall be barred to Execution by the first Purchase, or by the Judgement onely, or by Enquest taken, or by Execution awarded, or by Entry or Plea.

If a man recover his warrantie *pro loco & tempore*, in a *Warrantia Chartarum*, he shall have Execution of the Land which he hath at the day of the Judgement; so upon a Recovery in Debt, but of Chattells, but from the day of the Execution sued, 2 H.4.14. and against the Heir he shall have Execution of the Lands which he hath by descent the day of the *Scire facias* awarded, 40 E.3. lib Aff. Garranty est Charters 5.

Upon a demurrer adjudged against an Inne-keeper, the Plaintiff could not have *Elegit* of the Lands which he had at the day of the writ brought, but from the day of the Judgement, but if he had recovered by Verdict, he should have had the Lands which he had the day of the Enquest first taken, but if the Plea had been begun, and Judgment given the same Term, Execution should be of the Lands which he had the day he first entered into the plea, 42 E.3.11.

And see when the Plaintiff recovered in Debt, and had a *Scire facias* against a stranger, a purchaser who appeared and pleaded, and found against him, the Plaintiff had *Elegit* of the Lands of the Feoffor, which the Defendant had the day of the pleading, 33 E.3. Execution 162.

Writ found by *Nisi prius*, and Judgment given thereupon in Bank, the Plaintiff had Execution of Lands, which he had the day of the Enquest taken, 17 E.3.5. because all was but one day, 21 E.3.51. Execution 68.

It was found for the Plaintiff by *Nisi prius* in a Writ of Mesne, and the Judgment affirmed upon Error in the Kings Bench, Execution shall be of the Lands of the Defendant which he had the day of the first Enquest taken, 15 E.3. execution 64. 32 E.3. acc. and upon no suggestion he shall not have Execution of Lands before Enquest taken in Writ, 31 E.3. execution 66.

Assise was taken and adjourned into the Common Pleas, for difficulty of Judgment, and in the Common Pleas Judgment given for the Plaintiff, he shall have Judgment for the damages of the Lands, the day of the Judgment



Judgement, otherwise it is of an Enquest by *Nisi prius*, because all is one day, 21 E. 3. 51.

If a Writ be awarded to enquire of Wast by default, and is found and returned, Execution shall be awarded of the Lands which he had the day of the enquest taken by the Sheriff, for he is Judge there, 17 E. 3. But see 14 E. 2. execution 144. that it shall be of the Lands which he had, the day of the Judgment given.

A man doth recover damages in Trespasse, and upon a *Scire facias* returned *Nihil*, had Execution of Lands which he had, the day of the Judgment given, not from the day of the Writ, 6 E. 3. 15. 1 E. 3. 4. and in Ward he had *elegit* of Land which he then had, and not the day of the Writ brought, 29 E. 3. 27.

One sold his goods by fraud after Judgment, to prevent execution, and the same was returned, and the Sale was holden good, and the goods not liable to the execution, 3 E. 3. execution 108. but it may be proved that he himself took the profit of them, and then *Thorpe* was of opinion that such Sale was not good, but should be avoided, although it were by Deed, and execution against the Vendee, *Quia fraud & dolus nemini parum nocentur*.

In an Affise the Plaintiff was amerced a Mark, and holden that the Land which he had after the amercement should be onely charged, 22 E. 3.

In attaint upon false Verdict given in Affise, *Herne* said to the Sheriff that he should enquire of the goods and Chattels of the Defendants which they had aliened after the date of the Attaint, and that he should seise them into the Kings hands, and also to enquire of all the goods which were upon the Land, at the time that the Plaintiff recovered, and to seise them in whose hands soever they were for the Plaintiffs damages in the same County, 8 E. 2. Affise 396. 42 E. 3. 26.

If the King recover a Debt, all the Lands which the party hath at the day of the Writ are charged.

Execution awarded against executors, the *Fieri facias* returned, that he who pleaded the false Plea had nothing, nor none of the others, of the goods of the dead, but that they had Assets, the day of the Original brought, and nothing after the Writ of execution, upon which execution was awarded of their proper goods which they had at the day of the Original, 17 E. 3. 45. execution 76.

XX XVII

**XXXVII.** Where Execution shall be by Elegit, and where by Metes and Bounds, and where in another County then where the Writ is brought.

In an Action upon the Case against an Inne-keeper, execution shall be by elegit, so in an Action upon the Case for Hvy and Cry not pursued, 43 E. 3. 11.

Execution of a Recognisance by elegit good, 44 E. 3. 11. Execution 35. and of what Lands it shall be, See 16 E. 3. execution 47.

Elegit returned, that the party had but two Marks Rent, the Plaintiff prays a *Capias*, and the opinion was that he should have it, but if the Defendant be taken for the Kings fine, and the Plaintiff pray that he may continue in prison for him &c. he shall not have an elegit afterwards, if the party do not dye in prison, 45 E. 3. execution 52.

Tenant by elegit shall have the moiety of the Land by Metes and Bounds, and shall not hold the Land *pro indiviso* 32 E. 3. execution 67. But see that execution was made of the moiety, and the Sheriff and the executors who recovered the debt of their Testator, came together to view the Land, and when they were but a little from the close, the Sheriff said to them, I here deliver you Seisin of the moiety, enter into the Close who entered accordingly, and this was holden to be a sufficient Seisin, and the words were of the Moiety of the whole, so it seems it was without Metes and Bounds, H. 2 E. 2. execution 119.

It was said, by the Court that Execution by elegit, it doth not lye for, or against an Abbot, 14 E. 3. execution 74. But 19 E. 3. execution 80. such Execution was against an Abbot, and also for him by elegit, 20 E. 3. execution 82. But that elegit doth not lye for damages recovered against an Abbot, see 21 E. 3. 11. execution 125. contrary that Execution was granted, P. 20 E. 3. execution 83.

One recovered Debt for want of pleading, and had an elegit where the Original was brought, and to four other Sheriffs: So of a Statute Merchant, 24 E. 3. 30. Execution 91. and where not, see 8 E. 2. execution 240.

Walsen reported a Case, that if the Defendant come by the Bishop, the other shall not have Execution, but where the writ is brought, but if he come by the Sheriff it is otherwise, 30 E. 3. Excommengement 28. the book seems to be that he shall have Execution where the Bishop &c *lege librum*, because it is obscure &c.

Elegit shall not be upon a *Scire facias Nihil* returned untill the party be warned, 4 E. 3. 16. execution 99. But being warned elegit, doth lie, 1 E. 3. 3. execution 104.

If one acknowledge himself to be indebted in the Common Pleas, without coming in by Procelle, the party thereof shall not have elegit,



for the Statute of *West 2 cap. 19.* is, *cum debite fuerit recuperata*, and that is meant by Action, 2 E. 3. *execution 120.* See the Statute, for it says also, *vel recognovit &c.*

Execution by *elegit* doth not lie of Lands in ancient Demesne, 9 E. 2. *execution 136.* But execution of the whole shall be by *elegit*, as of the moyety at one day, and the moyety at another day, 10 E. 3. *execution 137.*

Administrator charged with Debt without a Deed of the Testator, because he himself was privy to the Contract, the Plaintiff did recover, and had an *elegit* of the goods of the Testator, so it lyeth of goods (except the goods of the Plough) as well as of the moyety of the Land, and that is by Statute, 40 E. 3. 10. *execution 17.*

### XXXVIII. How Execution shall be upon death, *Nihil, Non est inventus, or Clericus returned.*

**E**xecution of a Statute Merchant sued by two, the Conusor was returned dead, and execution awarded, but after, the one Plaintiff said, that the other was dead hanging &c. and he could not have execution without a Writ out of the Chancery, setting forth his Case, 29 E. 3. 38. *execution 92.* How upon death of the Conusor, a stranger shall have execution shewing the Statute, see *Divis. 4. 1 E. 4. 11. execution 15. 15 R. 2. 16.* and where he sued execution, and one was returned dead, it was awarded that the other should sue alone upon a Statute Merchant, 41 E. 3. *execution 83.*

Two sued Certificate of a Statute Merchant, the Conusor is returned dead, the Conusor shall have execution presently, 19 E. 3. *execution 59.* and that of all the Lands which he had the day of the Recognizance acknowledged, or after, 9 E. 3. 24. *execution 97.*

If in a *Scire facias* upon a Recognizance against two, one is returned dead, the other *Nihil*, how he shall have execution, See *Divis. 5. 15 E. 3. Execution 78.*

**EXECU**

# EXECUTORS, AND ADMINISTRATORS.

1. Where Executors shall be charged of their own goods by their Plea, or own act with the Principall, and when onely with damages of their own goods.

Executors shall be charged because they had Assets at the day of the Writ brought, but goods sold before Judgment shall not be taken in Execution, but their own goods *per Curiam*, 9 H. 6. 57. *executors*.

If upon a *Fieri facias* against Executors, the Sheriff doth return that they have nothing in their hands, if it may appear that they have aliened, or wasted the goods of the Testator, and if they pay him who hath recovered of a later time, this is Waste, 9 H. 6. 9. 5 H. 7. 27. 9 E. 4. 12. 21 E. 4. 15. The same Law where the Sheriff returns *Devastaverunt*, 11 H. 4. 68. 33 H. 6. 24. 34 H. 6. 24. and damages for the time of the Testator and for their own time.

See in the first Case, the Recovery seems to be naught, because the contrary is confessed by the party by his Plea, 9 H. 6. 57. 3. H. 7. 11. 34 H. 6. 24. 33 H. 6. 23.

And if Executors do pay debts which are due by Deed before those which are due by Record, this is a wasting of the goods, and they charged of their own goods. So if an Executor do pay a debt to a Common person due by Record before the Debt due to the King, which is also upon Record: but of debts due by matter of writing, they are not bounden to pay the one before the other, but if they do pay Legacies before Debts due by specialty, they shall be charged of their own goods, 21 H. 4. 25. *19 H. 6. 49 and 50. if they sell the goods of the Testator, or contract them to their own use, it is a Devastavit 19 h. 6. at. Vide C 5. part. Harrysons Case acc.*

One Executor came at the Distresse, and did confesse the Action, for which cause the Plaintiff recovered against them all the Debt and damages of the goods of the Testator, 18 H. 6. 3. *Executors 20.*

Debt against three Executors, it was found that one who pleaded he never was Executor, was Executor, and that the third who pleaded that



4 H.6.22.  
11 H.6.36. acc.

that he had nothing in his hands, had 5 l. for which it was awarded, that the 5 pound should be recovered against him, and the rest against him who was found Executor, against his own Plea, 46 E.3.9. 72.9 H.7.15. 11 H.4.5. the same Law where one alone denyeth the Deed which is found, 17 E.3.45. *executors* 72. But it seems the same is not Law, unlesse it be denying of their own Deed, 6 E.4.1. and 34 H.6.24. Yet it is said in 33 H.6.34. that they shall be charged of their own goods, where they plead a perpetuall barre, and the same is found against them, but it seems the charge shall be of goods of the dead, whatever Plea they plead, if they have Assets, and if not, then of their own goods, 33 H.6. Judgement 38.

14 H.7.28.

16 H.7.8. 21 H.

6.1.7 E.4.8. &

11 H.4.5. acc.

If an Executor plead that he hath fully administred, if Assets be found, he shall be charged of his own goods, vide 6 E.4.28 H.6.3. acc. Vide 39 H.7. per *Executors* 22 vide 46 E.3.9 and 10. The same for Debt against Administrators, who plead that they are not Administrators, which is found against them, they shall be charged of their own goods.

11 H.4.5.

And upon the Plea, that they were never executors, *Myl* said that Judgment for the Debt and damages shall be of the Goods of the dead, and that upon a *Nihil* returned, afterwards an especiall Writ shall issue of their own goods, as upon a *Devastavit* returned, the Judgement shall be conditionall by *Needham*, if &c. 33 H.6.2 E.4.4. and *Myl* conceives, that upon fully administred, and such Pleas found against them, they shall be charged of their goods, as to the damages.

If a demurrer upon a Plea be adjudged against them, the Judgment for the damages shall be of the goods of the dead, if they have any, *For* 31 H.6.4. and 11 H.4.5.

If Judgment be given against them of the goods of the dead, and the Sheriff returns, that they had Assets the day of the originall, but nothing at the time of the Execution sued, Execution shall be of their own goods, 17 E.3.45.

Debt against Executors upon an Obligation of 20 l. they plead that they had nothing in their hands, and it was found that they had not, wherefore the Plaintiff recovered of the goods of the dead, and damages of their own goods, 3 H.6.4 *executors* 2.

*Where Executors shall be charged with a Debt, which the Testator was not charged with, and where they shall have Debt which the Testator could not have.*

A Man grants to his eldest son 4 s. of the yearly rent of such Land, &c. the Son brings Debt for the arrearages against the Executors, and good notwithstanding the Land descends to him, because he may choose to have it as an Annuity, or as a Rent-charge, 43 E. 3. Executors 71. The same Law of an Annuity granted to a stranger during the life of the grantor, otherwise not, 7 E. 4. 26. Debt 85. 9 E. 4. 48. Debt 90. Executors shall not have Debt for arrearages of Rent reserved upon a Lease for life, because it is a Rent-service, and belongs to the heir, otherwise it is of a Rent-charge determined by his death, 4 E. 3. Executors 98. 2 H. 6. 8. Debt 111. *Quare.*

If a man grants a Rent-charge for life, and afterwards alieneth the Land, and the grantee dyeth, his executors shall not have Debt for the arrearages against any body 11 H. 4. 92. by *Thirn*, but *Hanckford* said, that they should have Debt against the Ter-Tenant, and that was (as it seems) for his time, 26 E. 3. 64. Debt 180.

A man grants the Reversion of his Tenant for life in Tail, rendering Rent during his life, and other service after his death, and dyeth. The Executors shall not have Debt for arrearages due during the life of the Lessee, other for arrearages after his death, 17 E. 2. Executors 112. vide 4 E. 3. Executors 98.

Tenant for life maketh a Lease for years rendering Rent, the Lessee for years sows the Land, the Lessor dieth, the Lessee shall hold the Land for that year, and the Executors shall have Debt for the Rent of it, 32 E. 3. Debt 14 H. 6. 26. But he shall lose the corn which is sowed, by pleading that he did no wrong against the first Lessor, in an Assise.

If a Rent-charge is assigned to a woman for Dower, her Executor shall have Debt for the arrearages, 32 E. 3. Debt 9. So the Executors of him who surrendreth a Corodie unto an Abbot rendering Rent, 12 H. 4. 17. Debt 116.

One had a pension of 20 l. during the war, to be paid at four Terms, and the first Term being past, the Grantor dyeth, Debt lyeth against his executors for that Term, and the Rent shall cease by his death, 2 E. 3. 84. Debt 143. vide 10 H. 6. 24. 12 H. 6. 12.

If Executors do account of the Receipt of the Testator, and are found in arrearages, Debt lyeth against them, yet no Action, if no account of their Testator, 2 H. 4. 13. Executors 49.

Define upon the Custom of the Nation, the Executors after the Debts payed, 30 E. 3. 25. Define 25. 28 H. 6. 2. 2. 1. and by *Gloucester* 7. cap. 6. It seems that was the custom.



III. Where Executors shall be charged by their admittance of that which they should not be charged with of Right, as of Contract or Trespasse of their Testator &c. and where he might have waged his Law.

Vide 44 E. 3.  
42. 10 H. 6. 16.

**D**ebt brought against Executors upon a simple Contract is good if they admit it, and such Recovery shall be executed, 46 E. 3. 10. So in Debt against them of arrearages of accompt, of a thing which lyeth not in accompt, they shall be charged if they pray not Execution, although their Testator might have waged his Law, 13 H. 6. *executors* 21. and if they will accompt upon the Receipt of their Testator, and if arrearages be found, Debt lyeth for them, and they have no remedy, 2 H. 4. 13.

Executor charged by Contract of the Testator with his own deed of the Debt, when he was Attorney generall to the Testator; the same Law of Administrators, 46 E. 3. 10. *Administrators* 17.

A servant who is compellable to serve by the Statute of Labourers shall have Debt against the Executors of his Master without a Deed, but not if he were not compellable to serve &c. 4 H. 6. 19. *Executors* 42 H. 4. 14. *executors* 50. and it seems this is of a servant of husbandry only.

Debt doth not lie against Executors upon arrearages of an accompt, where their Testator might have waged his Law, and therefore they may well pray that the Plaintiff be examined, if the thing lay in accompt or not 13 H. 6. *Executors* 21.

If the Testator do burn a Charter which is delivered to him by Indenture, Detinue lyeth of that against his Executors, and for the damages of the goods of the dead by *Hanck*, but *Hill* held that the Executors should not be charged but when the Testator was bound in a summe certain, 11 H. 4. 47. *Executors* 56.

15 Eliz. Dyer  
322 acc. 10 E.  
12. Dy. 271. it  
lies not against  
the heir of the  
warden of the  
Fleet for an es-  
cape.

Debt doth not lye against the Executors of the Gaoler who suffered Prisoners condemned to escape, 40 E. 3. *Executors* 74. 41 *Aff.* 13. And held that Debt doth not lye against the Executor of the Ordinary, 11 E. 3. *executors* 77. But there *Trew* alledged the contrary to be adjudged, 16 E. 2.

Executors shall not be charged by a Tallie sealed by the Testator, because he might have waged his Law against it, 25 E. 3. 40. 12 H. 4. 33. Covenant against Executors upon the same broken in the life of the Testator, as if he covenant by Indenture, that 7. S. shall serve me, 47 E. 3. 22.

Detinue upon the Custome *de Rationabili parte bonorum* lyeth against the executors after the Debts payed, 30 E. 3. 25 *Detinue* 52. 28 H. 6. 55 E. 4. 21. *F. N. B.* 122. and by *Glanvil lib. 7. cap. 6.* It seems that was the com-  
mon

mon Law, although that the Writ mentions the Custome, See *Magna Charta* cap. 18. 40 E. 3. 38.

Detinue against executors upon a bailment to the Testator, where they have possession, and they shall be charged as executors, and he who appears at the Distresse shall answer, and that they were never executors, is a good plea, 11 H. 4. 44. 14 H. 4. 28. 21 H. 6. 1. and 11 H. 4. It is holden that Covenant lieth against an executor, but not Trespass for the wrong done by the Testator, nor no Action for a duty or thing not certain, Debt against executors upon a Deed of annuity of the Testator 39 H. 6. 27.

## IV. What shall be said Devastavit of the goods of the dead, and how Executors shall be charged of them.

Converting of the goods to their own proper use is a *Devastavit*, 39 H. 6. 45. but not if they have redeemed the goods before with their own proper monies, 21 E. 4. 2. 20 H. 2. and 20 H. 7. 5. acc. because by the redeeming of the goods, the proper plea of them is changed. 6 H. 8. Dyer  
2 Plo. Com.  
3 Ma. Dy. 187.

If they effoign the goods depending a *Scire facias* upon a Recovery against the Testator, this is a wasting of the goods, 12 E. 3. executors 73. 9 H. 6. 57.

Release unto the Debtor of the Testator is a *Devastavit*, 13 E. 3. and 6 H. 4. 3. if they pay Debts upon Contract before Debts upon Record: 7 E. 4. 30. So if they pay the Children their portions before Debts, 21 E. 4. 21. 30 E. 3. 25. So if they pay a Bond not then due, and not that which is due, 9 E. 4. 13. by Bryan.

When a new Writ is brought against executors by Journey accompts, they shall be charged with the goods which they had at the day of the Writ brought, and the administring of them depending, the first suit to any other is a wasting, but that they had nothing in their hands after notice is a good Plea, where the Action brought against them in a forreign County, &c. 48 E. 3. 21. 2 H. 4. 23.

And note that arrest by *Capias* and the like make sufficient notice, but payment of Debts upon Record due before shall well discharge them, notwithstanding the Action depending and notice, but of an action brought in the same County, notice is not traversable, and upon such Wasting, the Judgement shall be conditionall of the goods of the Testator, if they have any &c. 2 H. 4. 13.

And if three Actions do depend against them, they may pay first *Dr. and Student* which they please, and no wasting of the goods before Judgment, so if 76 acc. they be sued in divers Counties, by Dyer 7 Eliz.



V. Where Executors have Assets in their hands, and what thing shall be said Assets, and where they shall retain for their own Debt, and Assets in two places.

14 Eliz. Dyer.  
310 acc. 10 E.  
liz. Dyer 264.  
ac.

IF a man deviseth Lands to his Executors to sell and distribute for his Soul &c. and they sell them accordingly, this is good Assets, the same Law if he enfeoff them to the same intent, 3 H.6.3. 2 H.4.23. also the profit of the Land before the sale, is good, Assets 38. Aff. 3.

Damages recovered in Trespasse of goods carried away in the life of the Testator is good Assets, 21 E.4.4.3 H.6.3.

Pls. Com. 186.  
120 E.4.17.  
21 E.4.3.  
4 H.7.4. vide  
when the debt  
is extinct, when  
not.

If the Debtee maketh the Debtor and others his Executors, the Debt in the hands of him is good Assets for a stranger, by *Choke and Danby*, but his companion shall not have an Action &c. *Pigot and Littleton* say, that the Debt is extinct, 8 E.4.3. 21 H.7.31. agrees with *Danby* and that if the Debtee make the debtor sole Executor, the Debt is extinct, not in the first Case, if not that the Debtor survive the other, but it is holden and ruled to be extinct in both Cases, 20 H.7.17. and 8 E.4.3. it is said, if a Debtor marrieth with the Debtee, the whole debt is extinct: So although a Divorce be after, 11 H.7.4. 11 H.4.82. but against that is 26 H.8.7. And if the Debtor first dieth in the principall Case, the survivor shall not have an action against his Executors for the Debt of the Testator, 20 E.4.17. and it seems the debt is extinct, although that the Debtor Executor doth not administer, but the debtee being Executor of the debtor with another, the debt is not thereby extinct till he administer, *ibidem*, and 21 E.4.3. 12 H.4.21. *Barre* 188. but 31 E.3. Executors 82. seems that the debt is not gone by the Administration of the Debtee; and it is there said, if the debtee marrieth one of the Executors of the Debtor, she and her Husband may bring debt against the Executors, *ibidem*, but it is holden that the debt shall be extinct by the Administration of the husband before the marriage, 11 H.4.82. and the opinion of *Read* is, that if the debtor make the debtee his sole Executor, that he may retain to pay himself, 20 H.7.5. 31 E.3. Executors 82. 12 H.4.3.

Money recovered against Executors shall not be said Assets to him who brings another action against them before Execution sued, 9 E.4.12.5 H.7.29.

A Pawn redeemed with their own proper monies, shall be Assets for the Surplusage of the value &c. 20 H.7.5. 21 E.4. acc.

Executors may well retain the goods of the dead, which come to them after they have paid of their proper goods for him, 20 H.7.1. *Choke* thinks not without agreement of the Ordinary, 21 E.4.25.

4. *Eliz. Dyer* 208. In debt against Executors: Issue was whether Assets or no Assets, and Evidence was given that by an Order of the Prerogative, and money was to be brought, and to be delivered to the Executors.

consent of Court, and he by the same Order was presently to pay it over to another, yet in that case it was Assets in his hands.

Goods sold and re-bought of the Executors without fraud, shall not be Assets in their hands, but onely the monie &c. Otherwise it is of a Sale by coyn, if they come again to their hands 18 H. 6. 4. and 5. So of the Sale of the Husband, of the goods which the wife hath as Executor.

If the Testator be indebted to two severally, to each in 40 l. and leaves onely 40 l. in goods, if the Executors agree with one for 10 l. and have acquittance for the whole 40 l. the residue shall be Assets to the action of another, 27 H. 8. 6.

Two Tenants in Common of a Lease, one maketh the other his Executor and dieth, the moyetie is Assets in the Executors hands, 21 Jacobi in B.R. adjudge acc.

The goods shall be Assets according to the very value, and the appraise-  
ment in the inventorie is nothing in our Law, 20 H. 7. 5. by Hody, Chief Baron.

T. 39 Eliz. in the Common Pleas, the Case was this,  
Francis Kitley

made two Infants his Executors, Administration was granted durante minore etate. In the Administration hands were goods of the value of 4000 l. the Infants at full age release to the Administrators, adjudged, the 4000 l. was Assets, and the Release of the Infants Executors a wasting of the estate, accordingly in C. 9. per Princes Case.

Upon fully administred pleaded, the Plaintiff shall not take Issue, that there are Assets in two Counties but in one, yet it may be that he hath a property in every County, and upon the Issue he shall recover but in one, Quare P. 18 E. 2. Executors 114. and Administration shall not be alledged in divers Diocesses against the Ordinary, M. 12 R. 2. Administ. 21 But see where one traverseth a deed which is found against him, the Judgment shall be against him of his goods, and against the others of the goods of the dead, and being in divers Counties Proccesse shall be made to both Sheriffs, and the Writ is to have the money here, and if one Sheriff hath it, the other shall not do execution, 17 E. 3. 45. Execut. 76.

VI. What thing shall be said an Administration to charge one as Executor or Administrator, what not.

Expenses about the Funeralls is not an Administration to bind him, but a work of Charity, and every one may do it, 20 H. 7. 5. 21 E. 46. 21 H. 6. 28. and the party may plead it, without that, that he did administer in any other manner, 37 H. 6. Administ. 7. meddling with the goods of the dead, is no administering, without paying or taking of them

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*Ec.* But if he meddle and pay debts with his own monies, this is a good Administration, 20 H. 7 5. and this is meant of Executors by wrong, for if Executors of Right meddle with the goods, the same is an Administration without any more, 21 E. 4. 6

That stranger claims the goods of the dead as his own, and converts them to his own proper use, shall not be charged as Executor, otherwise it is, if upon such claim he convert them to the use of the Testator, 23 H. 6. 7. and this is of an Executor in fact. *Bryan* saith, if he first meddle with the goods, and afterwards converts them to his use, he shall be charged, 20 E. 4. 17. and see agreeing to 32 H. 6. 21 H. 6. 28. 41 E. 3. 11. 9 E. 4. 20. and all the Books are of Executors in Right, for Executors of wrong are not without expresse administering as Executors, 50 E. 3. 9. acc.

If the wife taketh her apparrell devised to her by her husband, this is no Administration, 33 H. 6. 31. contrary, if she were made Executrix by her husband, if the same were not by the delivery of the other Executors, 11 H. 4. 83. and therewith agrees 37 H. 6. *Administ.* 7. of taking of her necessary apparrell.

And if the wife misuse the goods of her husband which she hath by reason of her Quarentine, the same is no Administration, 19 H. 6. 14.

If one deliver me goods to keep untill after his death, and then to dispose of them for his soul, if I am Executor for those goods, 8 E. 4. 5. 8 E. 4. 3.

If the Ordinary doth sequester upon refusall of the Executor, an Action lyeth against him as Ordinary, notwithstanding that there are Executors 9 E. 4. 3.

Sale of an Executor by force of a devise, is an Administration, and if he who administred of wrong taketh Letters of Administration before an Action brought against him, he shall be charged as Administrator, and not as executor of his wrong, 9 E. 4. 33. and 9 E. 4. 47. But the taking of Letters of Administration shall not abate a Writ brought against him before as executor, 21 H. 6. 8. *Executors* 16.

9 *Ellix Dyer*

255. If a man party executor, 21 H. 6. 27

hath a Letter to collect and sell, if he sell, it is an Administration. C. 9. part *Henslow's Case*, acc.

A Letter to collect and to accompt to the Ordinary, doth not make the An Acquittance made as executor, is a good Administration, 13 E. 4. *executors* 91. 6. H. 4. 3.

A Sale by a Bailiff upon a warrant from the Sheriff, who hath a *Levii facias* for the King, is no Administration, 8 R. 2. *executors* 122.

Debt brought against an executor because he hath administred, it shall be a good Plea for him that the goods of the Testator came not to his hands after his death, 21 H. 6. 19. *executor* 44.

A Probate of the Will is no Administration, because it is *opus spirituale*, 27 H. 8. 11. but if he pay the Fees with the goods of the dead, it is otherwise, 26 H. 8. 7.

The Ordinary committed Administration to *B.* who said he would see the

the goods and be advised, and upon advisement he refused, and delivered back the Letter of Administration to the Ordinary, the same is no administration, and in an action against him, he shall not conclude, without that, that he did administer in other manner, because this is none, 37 H.6. *Administrat. 7.*

VII. *Wher one shall be charged, as Executor, as Administrator, or as Ordinary, and who shall be said Executor, who coadjutor and who surveyor.*

**D**ebt doth not lie against an Executor as Administrator, nor *à contra*, 9 H.6.7. nor against the Ordinary as Executor, or as Administrator, 9 E.4.33. and if the Ordinary be made Executor, and refuseth, and doth not prove the Will, the Action shall be against him as Ordinary, and against his Committee, as Administrators in that Case, 20 H.6.1. And he who administers of his wrong shall be charged as Executor, and not as Administrator, 11 H.4.71. and if I will that *J. S.* shall dispose my goods being in his keeping, he is Executor as to them. C.9 part Hen-floes Case.

*Fitz. saith*, If a man make two Executors, provided that one shall not administer, this is good, and the one onely shall be charged, but he ought to joyn the other in an Action, and he saith, that if a man make two Executors, and that the one shall administer the goods in one Town or Diocels, and the other in another &c. this is good, and they are speciall Executors, but *Englefield* and *Brudnell* held this severall limitation void, because repugnant to the premises, 19 H.8.8. and with these agreeth *Martin*, 3 H.6.7. but *Babington* contrary there. Vide 8 E.4.5. & 8 E.4.3. before acc.

A man makes two Executors, provided, that if they will not &c. that others shall be &c. this is good, and the others are onely Executors by the refusall of the first, and they discharged by the affirmative, because every condition doth imply a negative, and Debt doth not lie by any means against the first, and the others together, 3 H.6.6. *Brief. 11.* As a Devise, that his Executors shall sell, and upon their refusall the Parishioners, &c. now they shall not joyn with the Executors, 49 E.3.17.

A man makes *A.* and *B.* his Executors, and besides I will, that *J.* and *K.* be coadjutors to distribute, as *A.* and *B.* no Action lyeth against *J.* and *K.* 21 H.6.6. *Executors 42.*

If the first Testament be disproved by a later, all acts by the first are void, and no action against the first, because his authority is disproved, vide 4 H.7.13. 21 H.6.8. as he who administers of his wrong, having letters of Administration shall be no more charged as Executor, 9 E.4.33. 11 H.6.8. and 9 E.4.47. that an action by the one name or the other is good, But if he hath wasted the goods before the Administration com-



*Executors and Administrators.*

committed unto him he shall be charged as Executor, because otherwise he should not answer but for the goods which came unto him after the Administration committed, 2 R. 3. 20. 13 H. 4. executors 118. 21 H. 6. 8. & 24.

If the Ordinary commit Administration because the Will is not proved, and the Administrator brings debt against the executor, depending which the Will is proved, the Writ shall abate, 7 E. 4. 13. and *Keble* saith, that after Probat the executor shall have Trespasse against the Administrator for the goods taken before, 10 H. 7. 18.

The refusall of an executor before the Ordinary after that he hath administered is void, 9 E. 4. 32. 21 H. 6. 23. 18 H. 6. 29.

If a man make *A.* and *B.* executors, and besides I will that *C.* and *D.* shall be executors with *A.* and *B.* or that *C.* and *D.* shall administer with *A.* and *B.* all are executors to the intent that *C.* and *D.* administer with *A.* and *B.* but not as executors, but as Coadjutors, nor without *A.* and *B.* nor shall not have an Action, nor no Action against them, and they shall not prove the Will, so it is of Overseers, 21 H. 6. 6. 17 E. 3. executors 113. 34 E. 3 executors 121.

A writ against three executors, whereas one is but executor of his wrong, is good, for he shall not abate it, if he doth not say, that he was never executor &c. 21 H. 6. 19. Executors 44. 21 H. 6. 8. and therewith agrees 39 H. 6. 46. 10 H. 6. 27. 33 H. 6. 38. but an Executor by wrong, and an executor of Right shall never joyn in an action, and there it is said, that an action lieth against Executors, & Executors of Executors together if they do administer, but not by the name of executors of executors, 31 H. 6. 46. 13 E. 3 executors 22. and the executors of Right may have Trespasse against the others, if they do administer.

In an Action against two, as executors, where the one is but executor of his wrong, and upon the default of the other he confesseth the Action, the other hath no remedy, but an Action of disceipt against him, 9 E. 4. 13. But *Littleton* saith, if both appear, and the right executor plead, and the other confesseth the Action, the rightfull executor may well say, that the other was never executor &c. *Quare*, if he hath administered as executor, 9 E. 3. 13.

He who had but a Letter to collect, shall accompt to the Ordinary, and an Action doth not lye against him, but against the Ordinary, 21 H. 6. 27. And *Bryan* saith, that if a speciall Administration be committed, as that he shall administer things in Action onely, no Action lyeth against such speciall Administrator, but if such speciall Administrator, or he, which hath a Writ to gather &c. administer of his own wrong, he shall be charged as Executor &c. 21 H. 6. 27. 16 E. 4. 1.

If two Administrators be, and a stranger doth administer with them of his wrong, it seems an Action doth not lye against him as Administrator, vide 11 H. 4. 71. 7 H. 4. 19. & 50 E. 3. 9.

A man makes a Will, and *B.* his executor, and afterwards makes another

the Will, and B. and C. his executors, B. proves the first Will, and the other is not proved, an Action will well lie against B. alone upon this matter, although C. also administred with him, 2 H. 5. 8. *executors* 46. But the proving of the later Will afterwards shall have Relation to defeat and disallow all that which they did by the first before, 7 H. 7. 13. *Executors* 41.

R. Executor of B. makes T. his Executor, who administred the goods of B. Debt lieth against him for the goods of B. as executor of executor, if he hath not administred of his wrong in the life of R. his Testator, 33 E. 3. 17. *Executors* 62. *V. de C. 5. part Reads Case acc.*

Debt upon an Obligation lies well against an executor, Administrator or the Ordinary, although none of them be named in it, 45 E. 3. 17. but the Heir shall not be bounden if he be not named.

If the Sheriff or his Bailiff upon a *Levari facias* of goods of the dead for the King, levy more then is due, and administer the Surplusage, they shall be chargeable for so much, 8 R. 2. *executors* 122.

The Ordinary may charge the Administrator for good cause, or without cause, 34 H. 6. 14. a.

If the Ordinary doth administer, and afterwards doth commit Administration over, yet an Action lieth against him, but it doth not lie against him as Ordinary, if he do administer in another Diocese, 12 R. 2. *Administ. 21.*

Debt well lieth against the Ordinary upon an Obligation of the Testator, but not for him upon an Obligation, &c. 35 E. 3. *executors* 105.

*VIII. Where Executors of diverse persons shall joyn in action, and where an action shall be jointly sued against them, and where Executors, and Executors of Executors shall joyn, and an Administrator of wrong joyn with the Executors.*

Debt was maintained against Executors, and Executors of Executors, for it may be that they have possession of all the goods, 15 H. 6. *Executors* 13. and therewith agrees 7 E. 3. shewing the one and the other Testament, but it seems 39 H. 6. 46. that they shall not be joyned, if not that they do administer of their wrong, and then they shall be named generally with the others, as joint-executors, so it seems it shall be brought against the Executors only, for if the executors of the Executors do administer with them, Trespasse lieth against them, 10 H. 6. 26. *Executors* 22. But it is there said, that the Action may be brought against the survivor alone, by which it seems the Plaintiff is at his election, and so it is agreed, 7 E. 3. 1. & 27 E. 3. 86. by *Wilby*, that he may elect. See 38 E. 3. 7. by *Thorpe*, *executors* 61. *Scrop* Justice said, that the survivor of the executors shall have the Action alone, but in an Action against the Executors, it behoveth al-

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so to name the Executors of the Executors, because they may have the goods, and to that all the Justices agreed, *M. 10 E. 2. Executors 110.* The opinion of the Court agrees of an action against them with averment, as *Scrope* alledged, *29 E. 3. 10. Executors 120.*

An action by an Executor, and the Executor of the Executor awarded good, yet the survivor alone might have had it by *Herl*, *18 E. 2. Executors 115.*

If Executors do convert the goods of the dead to his use, no action lyeth against the Executors, because they have nothing of the Testator, *39 H. 6. 45. Executors 29.*

Two Joint-tenants of a Wood, the survivor shall have the Action alone, and if Tenants in Common, they shall have severall actions, as Executor of each for his part, and it is no plea that the Testator made another Executor who is dead, and *B.* his Executor alive, *38 E. 3. 7. Executors 61. 15 E. 3. Executors 81.* Yet their Testators Tenants in Common ought to joyn in an Accompt.

*IX. Where one Executor shall have an action against his Companion, and where without his Companion, and where one shall be sued onely.*

**O**NE Executor shall not have an Action of Trespasse for carrying away of the goods in the life of the Testator, against his companion, *T. 4 H. 6. Executors 6.*

*Plo. Com 186.*

If one Executor hath possession of all the goods, the other hath no remedie, and therefore where the Debtor and another are Executors, the other shall not have action against him, but against his Executors he shall have by some, *8 E. 43.*

*19 H. 6. 31. b.*

*6 E. 4. 1. 42 E.*

*3. 26. per Finch-*

*men. the diffe-*

*rence is where*

*debt is brought,*

*and where*

*Trespasse for ta-*

*king goods out*

*of his possession*

One executor shall not have an action without naming the other who hath refused &c. for he may yet administer, *41 E. 3. 22. 42 E. 3. 26. 35 H.*

*6. 38. 4 E. 3. 43. Brief 1712. 9 H. 5. 6. Executors 48.* and the Release of him

who hath refused shall barre the others, *21 E. 4. 14. 15 E. 3. Executors 80.*

*21 E. 3. 19 E. 3. Covenant 24. 48 E. 3. 15. 15 E. 3. Executors 90.*

But it is said, that for goods taken out of his own possession, the one

shall have an Action without naming the other, because he need not

there shew the Will, nor name himself executor, but Trespasse of goods

taken in the life of the Testator shall be brought by them all who may ad-

minister &c. *42 E. 3. 26. 6 E. 4. 1. 12 R. 2. Executors 79.* But it is holden

that the one shall not have Trespasse against the other of his own possession,

*19 H. 6. 5. Executors 14.*

One executor bringeth an accompt against his Companion in both their

names, and not allowed, for he shall be accomptant to the Ordinary one-

ly, *13 E. 3. Executors 91.*

*13 H. 4. 1. Ac-*  
*compt 20.*

If one Executor doth release, the other hath no remedy, but a *Sub poa* 4 H.7.4. vide 6. H.4.3. by *Thirning*, if one executor to whom the Ordinary did not deliver Administration, doth release, the same shall be an Administration, and of the Debt released hee shall accompt before the Ordinary.

In an action against Executors, it is sufficient to name those who do administer, 16 H.7.4. and if they will plead to the Writ, that there is another not named &c. it behoveth to alledge in fact, that he hath administered, 9 E.4.12. *Executors* 34.

So it seems, the Action doth not lie against an Administrator, if in fact he hath not administered, 8 H.6.3. But it is holden that an Action shall lye against all who have Commission to administer, 9 H.5.6. *executors* 48. although indeed they do not administer, vide 9. H.5.7. In fine, if Administration be committed to ten men, debt must be brought against them all, not so of Executors, but against those who administer onely.

I need not name him who administred of his wrong with the Executors, but the Writ shall be well, because he was not made Executor, 33 H.6.38.

Debt against one as executor, he said, that the Testator made him and one A. Executors, to whom the Plaintiff had released, it was holden a good Plea, and the Plaintiff shall answer to that, without abating his Writ, because the Defendant hath not alledged, that A. is now alive &c. 22 H.6.39. *Executors* 18.

21 E.4.24.  
41 E.3.22.  
C.3. part *Hensloes Case* acc.  
*Plo.Com.* 135.  
and 281. in  
*Foxes Case*.  
C.9 part 38.  
*Hensloes Case*,  
is is a good plea  
without saying  
that the Will  
is proved. vide  
32.H.6.25.  
Vide 9 E.4.33.  
8 b.6.33. 36  
b.6. if one ad-  
minister of  
wrong, and af-  
terwards ad-  
ministration is  
committed to  
him by  
the Ordinary,  
he shall ac-  
count from the  
time of the  
death of the  
Testator.

## X. Where one shall be Executor after refusal before the Ordinary or disagreement in Court of Record &c.

If all refuse but one, yet they are Executors at their pleasures, 9 H.6.36. But if all refuse before the Ordinary, and he commit the Administration over, they are discharged for ever, and shall not meddle, 9 E.4.33. 36 H.6.38. 3.9.

He who hath administered as Executor, shall never be discharged by releasing after, 9 E.4.33. But if in that Case the Ordinary commit Administration over, Debt lyeth against him, and it shall be no Plea, that the dead made A. Executor who administered, if he do not also say that he proved the Will, 3 H.7.14. and there it is holden that he dieth intestate, but 4 H.7.13 and 10 H.7.9. agree to the Plea, but that he doth not die intestate in our Law upon that matter, and the writ which supposed that he died intestate upon such matter was abated, 3 H.4. *Administ.* 22.

An Executor not knowing it, took Letters of Administration, and after finding the will proved it, it is good, and he is executor, 9 E.4.33.

The Cardinal of C. being made executor refuseth, now he ought to



shew that he refused before the Ordinary, for his refusal is void by word in the Countrey, *M. 9 E. 4. 33 Executors 35.*

**XI.** *Where the Executors ought to have the Will and shew it, and what shall be said a sufficient Testament to maintain an action.*

**A**N Executor may well maintaine an action shewing a nuncupative Will under the Seale of the Ordinary, *4. H. 6. 1. Executors 19 E. 3. Covenant, 24. 10. E. 4. 1.*

And it sufficeth if it be sealed with the little seale of the Ordinary and not with the authentick seale, for the Court shall not enquire of that *4 E. 3. Executors, 98. 9 E. 4. 47. 21 E. 4. 50.*

And although the name of the Testator be raced in the Will yet it is good, for the Court cannot judge upon the sufficiency of the Will *22. H. 6. 52. Executors 17.*

*C. 5. part Mid-  
letons case ac.  
but an Execu-  
tor may release  
before probate  
of the Will.*

A Will is not sufficient to have an action upon it before probate *4. H. 6. 24. 9 E. 4. 47.* and yet it is not traversable if it be proved &c. but the Defendant may well say, that he is not Executor &c. *14. H. 6. 5. variance, 10. one traversed the Testator.*

A Will was awarded not sufficient, where it appeared, the Date of the Probate was before the date of the Will, *18 E. 2 Feoffments, 110.*

Executors shall not maintaine an action without shewing the Will, and the Writ varying from it, shall abate *36. H. 6. 16. Bricke, 137.* but this shewing needeth not, nor variance shall not hurt in an action of their owne possessions *43 E. 3. 31.*

In a ravishment of Ward or *Ejectione firma*, of the time of the Testator he ought to shew the Will, not of his owne time *7. H. 4. 2.*

Executor of his wrong shall not have an action, because he cannot shew the Will, *21. H. 6. 24. 9 E. 4. 47.*

Executors were driven to shew the Will in a *Scire facias* upon a Recognizance made to the Testator, & after that the Defendant had pleaded another Plea, admitting them persons able &c. and the Plea was, that there was another to be warned, and not allowed, *27. L. 3. 80 Executors 97.*

The Executor of an Executor, if he bring an Action, it becometh him to shew both the Wills, *7. E. 3. 62. Executors 97.* But they shall not be driven to shew them but once, and no execution for variance shall be allowed afterwards, if it be not entred *Verbatim*, *36. H. 6. 16. 38. E. 4. 2.* the reason is, because they may have an action depending in another Court, where they ought to shew the Will, *19. H. 6. 7.* But an Administrator ought to shew his letters of Administration at every day, as an obligation shall be, *16. E. 4. 8.* but they are not entred in *hac verba*, as an obligation is at another day, for if he bring the letters of administration at another day they are not traversable, otherwise it is of an obligation

and therefore he shall not plead variance after imparlance at another time. 26 H. 6. variance 17.

When Executors, or Administrators are by way of defence, they shall not shew any thing, because they are in possession, 10. E. 4. 1. 21 E. 4. 15. 21. H. 6. 23. and 16 E. 4. 1. but 22 E. 4. 10. is holden contrary of Administrators, but the other bookes held it all one, and there if they plead that they are Administrators and not Executors, or that that is another Executor not named; they shall not shew any thing thereof 21. H. 6. 23. 16 E. 4. 3.

In debt by Administrators they ought, to shew where the committing was, for the straverfable, and not whether they have administred or not, otherwise it is of Executors, and Danby conceives that they must shew where the Testator died 35. H. 6. Administrators 4.

10. H. 7. 18 if one enstle him- selfe, or justifie by way of Barr as Executor, there he shall shew the will, vid. 7. H. 7. 3. 19. H. 6. 74. ac. vid. 21. H. 6. 1. 16 E. 4. 2. 21. H. 6. 23. ac.

## XII. What person may make an Executor, what not, and of what things, and who shall be Executor.

A feme covert, by License of her husband may make an Executor, and may make her husband Executor 4. H. 6. 31. Executors, 5. 39. H. 6. 17. Executors, 28. 2. H. 7. 23. And she may be Executrix to another by the lease of her husband.

C. 4. part Og- nells case in fine. ac.

An Infane within age of 4. yeares may make his Will of Chattels, by *Parkin*, but not of freehold fo. 7.

Quare fol. E. 3. 44. by Candish, it seems, he can doe no legal act before four- teen yeares.

A Person may make a Will, but an *Abbot Deane*, Master of an Hospi- tall, Guardian of a house &c. not because they have a common seale, (this is of things of their house) 19. H. 6. 44. Testament 1. but a Bishop or an Arch-Deacon may well make a will, and therefore their successors shall not have waste, for waste done in their time &c. for they have two ca- pacities, 2. H. 4. 3. ac.

The husband cannot make Executors of an obligation which he hath in the right of his wife, nor of any other thing in Action 7 H. 6. 2. against C. 6. Executors 109. But if the Bond be made to both joyntly, he may 60. 10 E. 4. ac.

A feme covert may make Executors of that which she hath, as Execu- tor without the assent of her husband, and may devise her apparrell by *Finch* by the spirituall law, and by the common law also, by the assent of her husband 2. H. 7. 23. and 24. 18 E. 4. 11. A man cannot make his Will of things which he hath, but as Executor nor of things which shall not be forfeited by out-lawrie in action perso- nall, nor which shall not be attached in an Assize, nor distrained by the Lord, as of a furnace fixed, or a Table fixed, nor of Tymber, Pale nor house, nor of a Window which is fastened, but he may devise the glasses &c. 17. H. 7. 12. 20. H. 7. 13. 21. H. 7. 27. It seems that a man out-lawed in a personall action cannot make Exe- cutors





utors to be sold, and one dyeth, the Survivor may sell, *vi: 1 Eliz: Dyer*  
*110: and 23 Dyer 371: The difference betwixt a bare Authority, and Au-*  
*thority, coupled with an Interest, Vi: C: Lit: 113 and 181: acc:*

But upon the refusall of the executors, the Ordinary shall not admini-  
 ster, nor sell, 49 E. 3: 17: and 15 H: 7: 12: And these books agree, that  
 the executors have an interest in the Land by the devise, and not only an  
 authority, &c: and therefore if one dyeth, the other may well sell.

A Devise that the executors shall sell, and if they shall make default,  
 that the executors of the executors, and four of the parishoners &c. Now  
 the parishoners shall not intermeddle with the executors, but only with  
 their executors, 49 E: 3: 7.

If one willeth that his executors shall sell, they may well sell after refu-  
 sal before the Ordinary, because it is not Testamentary, and upon a De-  
 vise that his land shall be sold, without saying by whom, it shall be sold by  
 his executors and not the Feoffees in use, 15 H: 7: 12: *Perkins contra*, in  
 the full case, if they be not named by their proper names in the Will, and  
 contrary also in the last case, if the devise be not, that they shall sell for  
 the payment of his debts, *fol: 15 and 19: H: 8: 9.*

If the Testator willeth that his Feoffees shall sell, the Feoffees of the  
 Feoffees shall sell, but not if he will that *A: and B: his Feoffees shall sell,*  
 or that his Feoffees aforesaid, where he names them before; but here *A:*  
 and *B: may sell,* although they have sold before, or another by their com-  
 mandement, 15 H: 7: 11:

If I will that my Feoffees, shall make a lease for years and they have a-  
 liened the land, their alienee shall make the Lease, 15 H: 7: 12:

A Devise that *A* shall sell, shall not extend to his heir, nor to the heir  
 of the Survivor of the Feoffees, appointed to sell, and those that were  
 Justice of the Common Pleas at the time of the Devise, that they shall sell.  
 They may sell, but not their Successors, by *Brudenell 19 H: 8: 9:* and if he  
 willeth that his executors shall sell, their executors thereby shall not sell.  
*Quere, Perkins sets down the name of the Justices, fol: 106: and if the*  
*Devise was to distribute for his soule, hee held that the executors of the*  
*executors might well sell, fol: 105:*

Devise that the Abbot of *B: shall sell, where there is no such Abbot,*  
 there shall be no sale, 19 H: 8: 10:

A feme Covert executrix may baile goods to keep without her hus-  
 band, or pay debts, and have derinne, or account after the death of the  
 husband, 1 H: 7: 15. *Executors 40.* But the book at large is, that shee shall  
 not have in account.

The gift of a feme Covert executrix, and for to pray for the soule of  
 of the Testator, is good, 7 H: 4: 13: *Executors 54.*

A Release of one executor, shall barr them all, although they have resu-  
 sed, &c. 13 E: 3, *executors 91.* 21 E, 4, 9 E. 4 48 E 3 15.

*H. 26. El. in B.*  
*R. Vincent and*  
*Lees case, A*  
*man seized of*  
*Lands in Fee,*  
*and devised the*  
*same in taile,*  
*and if the Do-*  
*nee dyed with-*  
*out issue, that*  
*his lands should*  
*be devised by*  
*his five sons in-*  
*Law, the one*  
*dyed in the life*  
*of the donee,*  
*adjudged, that*  
*the others might*  
*sell, because*  
*named general-*  
*ly, but if they*  
*had been na-*  
*med by their*  
*particular*  
*names, and*  
*after the one*  
*had dyed, the o-*  
*ther could not*  
*sell, and so it*  
*was adjudged,*  
*M. 29 El. B. R. in*  
*Bonesant, and*  
*Sir Richard*  
*Greosfeilds*  
*case*  
*Vi. 11. E. 4. 2.*  
*Perkins 21,*  
*14 H. 8. 6.*  
*C. 5. part Mid-*  
*dletons case. ac.*



XIV. Where an Executor shall have an action for the goods taken away in the life of the Testator, and what action he shall have.

Executors shall have Ravishment of a ward taken in the life of the Testator, 9 H. 4. 11 H. 4. 54. Executors 52.

Executors shall have *Ejectione firme* of the Testator being Termor or Tenant by *elegit* and ejected, 7 H. 4. 6. Executors 53.

Executors of the Tenant by Statute Merchant shall have an Affize, 28 Aff. 7.

If one be adjudged to account to the Testator, the executor shall have a *Scire facias*, and upon that a *Capias* and *Exigent*, 14 H. 4. 1. Executors 59. 21 E. 3. 32. Executors 84. &c. they cannot have a *Scire facias*.

Executors of Executors shall not have an action for the Debt of the first Testator, 11 E. 3. Executors 78. against 23 E. 3. Executors 91. where they sued Execution of a Recognisance made to him, and therewith agreed 14 E. 3. Executors 86.

And they may have an action for an Annuity ended due in the life of the life of the Testator, 10 E. 2. Executors 110. 19 E. 2. Executors 117 and they may call themselves executors to the first Testator if they will, if no executors of the first Testator be alive, otherwise no action lieth for them. See for this difference, 19 E. 2. Executors 103. 19 E. 3. Covenant 24. of a Statute Merchant 28 E. 3. 92. Executors 96. 13 E. 3. Executors 92. and 28 E. 3. 92. by Wilby.

One hath a Judgement against three executors of their proper goods, and hath a *Scire facias*, and one of them dieth, he may charge the survivors onely, or them with the other executors of the other or with his heirs, but if the Judgement had been of the goods of the dead, it seems the *Scire facias* shall be against his executors, 23 E. 3. 8.

Accompt is given to Executors by Statute, and therefore Executors of the Executors shall not have it, 7 E. 3. 62. Executors 97. 13 E. 3. Executors 93.

If the Debtor of the King be made Executor to another, he shall not have a *Quo minus* in the Exchequer by colour thereof for a Debt due to the Testator, because the King shall not be paid of that which is not his own proper estate, 8 H. 5. 10. Executors 102.

Executors shall have Trespasse for the Charters belonging to the Testator which are taken out of their possessions, 16 E. 2. Executors 111.

XV. What goods of the dead the Executors shall have, what the Wife, what the Children, and what the Heire.

The wife shall have her apparrell convenient, - but not excessive, 33 H. 6. 27. And by the custome, the wife shall have the moyety, where the husband hath no issue; or if all his children were advanced in his life by him, otherwise the third part of the goods, 30 E. 3. 25 *Detinue* 52. *Briss* 305. but this is after Debts and Legacies payd there, and 1 E. 2. *Detinue* 46. and there holden. That *Rationabili parte bonorum* lyeth at the Common Law, and 17 Ed. 2. *Detinue* 58. which is grounded upon *Maria Chama*, 34 E. 3. *Detinue* 60. The wife shall not have Dower of the goods of her husband, if it be not by custome, and shee ought to set forth the same in her Count, 7 H. 4. So a *Summ* is not for the wife, and also for the Infants is not Common Law but only by Custome of the Country, and that is proved by all the Counts in this writ, 7 E. 4. 21. 28 H. 6. 5. The Heir by the Common Law shall have nothing of the personall things which are not affixed to the freehold, unless it be a box sealed, or a Chest locked, with the Charters of the Lands, for then he shall also have the Box and the Chest, but of other goods in them, the executors shall have *Detinue* against the Heir &c. 3 H. 7. 15. *Barr* 128. 31 E. 3. ac. But see 7 E. 4. 20. Exception was taken, because one did not shew that the custome did continue. 19 Eliz. in B. R. A writ was brought there and allowed, notwithstanding exception taken, that it was maintainable by custome, Vi. 1 E. 4. 3. Billing, acc. 30 H. 6. *Respond* 695. 28. H3. 4. 40 E. 3. 38. 39 E. 3. 9.

XVI. Where one shall be Executor and Administrator to one and the same person, and where one shall be Executor of one part, and another of another part.

If a man hath goods in diverse Diocesses, hee may make an executor of the goods in one diocess, and dye intestate of the goods in the other, and if he make his executors generally, they may administer as executors in one diocess, and refuse in the other, and take Letters of Administration there, 33 H. 6. 36. so it is of Provinces.

If I will that my executors shall sell my Lands, and distribute for my Soule, they are executors thereof, and the mony is good affets, *Perkins*, and 1 H. 4. 21. *Executors* 51.

XVII. Where



XVII. Where Executors shall have severall pleas, and which shall be first tried, and whether the one shall prejudice the other by his Act, or not.

Debt against Executors, one pleads *Misnomer*, and the other that he is Administrator and not Executor, and they shall not have both, no more then the Executors should have, two Pleas, 37 H.6. 17. but they shall have severall Pleas where each Plea goes in Bar, as if one plead fully administrated, and the other not the Deed of the Testator, 7 E.4.9. Executors 30. and the most peremptory Plea shall be tried, 21 H.7. 25. to that agrees, 8 E.4.24. executors 69. where one pleaded a Release, the second pleaded to the Writ, and the third fully administrated, and 41 E.3. executors 96. one denied the Deed, and the other pleaded fully administrated, and admitted good: But see 7 E.4. that where one confesseth the action, the other cannot plead, not the Deed of the Testator, and they cannot surrender in Dilatories.

But that he was never Executor pleaded by one, and pleined administrated by the other, these Pleas were tried together, 46 E.3.9. Executors 72.

Where one pleaded fully administrated, and the other that he had an executor, they were driven for to joyn in Plea, because the one was Dilatory, 7 H.4.13. Executors 54.

A man recovers his Debt, and hath the party in execution by Exigent, and dieth, now upon the Release of one executor, the party had a *Scire facias* against them all, *ad cognoscendum factum*, and he which made it, made the default, yet the others were estopped to gainsay it by Martin, yet in an action by Executors, or against them generally, if one doth not appear he shall be severed, and the other shall plead, otherwise it is in Debt against other persons, 10 H.6.2.3. and the release of one executor shall bar all the rest: So the Release of the husband shall bind the wife in Debt, 17 E.3.66 executors 89.

By the confession of one executor of the Deed, Judgement shall be against them all of the goods of the dead, 28 H.6.3.7.E.4.8. acc. for if one confesseth the action, the other shall not plead in bar, but he may plead an Outlawrie of the Plaintiff, or a *Misnomer* of himself, and as there said, that he who recovers upon fully administrated found against the Executors, may have Debt for the same duty, and in that action the executors may deny the Deed, because he could not have both Pleas before, executors 30. Vide 19 H.6. If they have no goods of the Testator, then the Judgement shall be against him that confesseth the Deed *de bonis propriis*, and so for the damages, 18 H.6. vide br. executors acc. 18.

ac.

14 H.12. acc.

One executor cometh at the Distresse, and denieth the deed which is found against him, the Judgement shall be against all the goods of the dead

dead, and against him of his own goods, if &c. 17 E. 3. 45. *Executors* 76.  
Debt against two executors, where one is executor by wrong, and he upon the default of the other confesseth the action, the other hath no remedie, but an action of deceit, 9 E. 4. 13. *Deceit* 21.

**XVIII.** *Where Executors shall be charged, because they have Assets the day of the Writ brought, and where he who first sueth shall recover, where not.*

**I**F Executors being warned appear, they shall not say generally, that they have nothing in their hands, but that they had nothing the day of the writ brought, or that a stranger hath recovered against them, and sued Execution after the writ, but if they do appear upon *Nihil* returned at the *Capias*, they may averre generally, that they had nothing after notice of the suit, 22 E. 4. 39.

was conceived, that Executors might pay Debts in writing before those upon Record accrued in the time of the Testator, and not in their time, and therefore in a *Scire facias* upon a Recognisance, or upon a recovery against the Testator, that they have nothing in their hands, the day of the warning given, is a good plea; But 21 E. 4. 25. puts the same Case, and is clear contrary by *Bryan*.

*Scire facias, sicut alias* against Executors in a Recognisance, they plead fully administrated the day of the second writ, and at the last, issue was taken, without saying, if they had day from the first writ. 41 E. 3. 31. 41 E. 3. *executors* 68.

*Scire facias* upon a Debt recovered against the Testator, it is a good Plea for the executors that they have nothing &c. the day of the warning, and by their default *Fieri facias* issued to enquire accordingly. So payment to another before Garnishment is no wasting of the goods, 12 E. 3. *executors* 73.

Resummons against executors upon the death of the Testator (depending a writ of Ward against him) that they had nothing in their hands, the day of the writ brought, shall be no plea for them, but they had nothing after the death &c. for the resummons is a continuance of the suit, as by Journies accompts, But recovery of a Stranger pendant the writ, shall be a good discharge, 18 E. 3. 4. *Wards* 110.

**XIX.** *Where the Devisee shall take the goods &c. without delivery of the Executors.*

**T**HUS said, that if one executor taketh the goods devised to him, this is an Administration in Law, but otherwise it is if he take them by



by the delivery of others, 11 H. 4. 83. *executors* 58.

A Book was devised to one of the executors for life, the remainder to a Stranger for life, now after his death the Stranger cannot take the same without delivery of the executors which are living, although they have delivered it to the first Devisee: also the remainder is good by way of Devise, not by gift, 37 H. 6. *Donee* 2.

*To whom the Executor shall accompt.*

**I**F one executor release a Debt, he shall accompt to the Ordinary, not to the others, so if he wast the goods, the others have no remedy. *Quare* of that, 13. E. 3. *executors* 91. See *Brief* 937. 19 E. 2. and 9 E. 4. 47.

**XX.** *Where the Executors of the King shall have his goods, and what goods, and of what things the King may make a Will.*

**T**He King can devise no Land by Will, nor nothing which he hath not in possession, by *Fortescue*, 35 H. 6. *Devise* 5. but a Devise of goods to the King is good, and he shall have debt, *Scire facias* or *Vener facias*, where another person is put to sue to the Church, 40 *Ass. De vise* 19.

When King Henry the fourth died, the opinion was that he might make a Will, and devise his proper goods, but not the ancient Jewels of the Realm and Crown, 1 H. 5. *executors* 108.

**XXI.** *Probate of the Will, and the Interest of the executor, before the same is proved.*

**I**F the Executor before Probate command his servant to take the goods of the dead, and he after refuseth, and another is made Administrator, *Prisot* conceived that the Administrator should not have Trespasse of others contrary, 36 H. 6. 8. 20 H. 7 13. the report is against *Prisot*, and so is 21 H. 7: 23. in the Argument; and if *7.* command *B.* to take the goods of *T.* and afterwards *7.* be the executor of *T.* *7.* shall have a good action of Trespasse against *B.* which see, 2 H. 7. 14.

**XXII** *where*

XXII. *Where the Ordinary shall sequester the goods, although there are Executors, and where he shall sequester them in another Diocese.*

IF the Executor doth refuse, the Ordinary may sequester untill they prove the Will; and goods in diverse Counties shall be sequestred by the Arch-bishop, 9 E. 4. 33. per curiam; *Executors*, 35. 37 H. 6. 27. *Administrators* 7. vi C. 5. part. *Princes case*, vi. 22. *Eliz. Vere & Jennes Case*.

But if the Executor prove the Will, he shall have trespassse against the Committee of the Ordinary, if he hath not refused before; 10 H. 7. 18. 1.

Debt against Administrators, it is no Plea that the dead made B. Executor who administered, without saying that he proved the Will, for if he refused upon a Writ from an Ordinary to prove it, the Ordinary may well commit administration and discharge him, by *Townes*, 3. H. 7. *Administrators* 11. But the opinion of the Court H. 13 H. 4. *Administrators* 22. that the action against an Administrator shall be abated, where there are Executors, although that they have not proved the Will.

Debt against the Ordinary, he saith that he hath committed Administration as Ordinary, it is a good plea & the action shall not be maintained, because that he did administer in another Diocese, but if he hath administered parcell in his own Diocese, and afterwards commits administration &c. yet the action lyeth against him, 12 R. 2. *Administrators* 21.

But the Ordinary shall not have an action of Debt, and *Thorpe* said that by no law he is compelled to grant Administration over, 35 E. 3. *Executors* 105.

Where the dead hath goods in diverse Diocesses, and the Arch-bishop commits administration, and also the Bishop of the Diocese for the goods there, the Committee of the Arch-bishop shall have an action of trespassse against the other, if he doe intermeddle, 10 H. 7. 18. C. 5. per *Princes Case*, acc. for there the Administration doth belong to the Arch-bishop alone, although he hath not in one Diocese, but to the value of a penny, by the whole Court 37 H. 6. 27. *Administrators*, 7.

XXIII. *What actions, and what goods Administrators shall have, what not, and by what name.*

It is conceived that an Administrator shall have trespassse for the goods taken before the Administration committed, for their release before shall barr them after &c. and it is a good barr against them, that before the committing of administration, that the Ordinary did baile him



*Executors and Administrators.*

the goods to rebaile, and that he did it before &c. 18. H. 6. *Administrators*, 2.

If an executor dieth Intestate, it seemes by the committing of Administration by the Ordinary, he may administer also the goods of the Testator. *Danby*, he shall Administer but only the goods committed to him, 10 E. 1. But the Executor of an Executor shall Administer both.

An action brought against the m shall be onely by the name of Administrators, 41 E. 3. *Administrators*, 14. 38. F. 3. *Administrator* 13.

**XXIV.** *Where Administrators shall be charged, and where there shall be Administration of parcel, and their Authority.*

**I**T seemes, the Ordinary may change the Administration upon cause, as that the other will not administer, is gone beyond Sea, is outlawed &c. also he may make new administrators upon condition, as if the other returne, &c. that he shall have it againe &c. 34. H. 6. *administrators* 31.

*Mowbray* saith, that if the Ordinary doth commit parcell of the goods to one to administer, and parcell to another severally, yet an action lyeth against them in common M. 38. E. 3. *Administrators* 13.

Administration accepted upon condition, and upon cause if the other shall agree, and upon disagreement to deliver back the Letters of Administration, and good, 37. H. 6. 28. *Administrators* 7.

**XXV** *Where Administrators shall shew their Letters of Administration, and what letters shall be sufficient, and where conditionall, and where he may take them conditionally.*

**A**N Arch-Deacon did commit Administration by prescription, 37. H. 6. *Administrators* 7. and the committing of Administration by a commissary was holden good, 11 H. 4. *Administrators* 12.

Of the shewing of the letters of Administration see division 11. and of conditionall Administration, the Division last before.

**EXTENT.**

# EXTENT.

1. *The Order of a re-extent, and when it shall be of goods aswel as of Lands, and what things lie in extent.*

A Man recovered damages in Mayheim, and had an Elegit returned &c. at which day the Plantiffe shewed that the goods of the Defendant were worth but 10 l. and that they were extended at 20 l. *Spig.* the statute is, that the goods praised at too high a vullue, shall be delivered to the Prizors, but this is upon a Statute Merchant, wherefore we will advise &c. 25 E. 2. extent 2.

The Sheriff upon a recovery in value, delivered more Land then he ought, the Tenant presently shewed that to the Justices, and had a Writ to the Sheriff to deliver the Land of the one and the other, and to deliver the Surplussage, who returned the recoverer dead, and holden that extent shall be without warning the heire or successor, because presently followed within the yeare, yet upon a recoverie against the Tenant, execution shall not be against the heire without a *Scire facias*, by *Herl*, M. 12. E. 3. extent 2.

Admeasurement of Dower, supposing, that she had more then she ought by 20 l. a yeare, she came and was ready to be admeasured, and the Sheriff did it by Writ, and returned, that she had but 40. shillings above the value, *Thorp*, the admeasurement shall be where the plea is, as in admeasurement of pasture, but the Plea may be holden before the Sheriffe, and then he should be judge, but here he ought to returne the extent by parcells, and we shall judge of it, and because it was not so, a *sicut alias* was awarded, P. 44 E. 3. 10. see the statute of *Westminster*, 2. cap. 8. and E. 2. B. 148.

Vouchee in a forreign County pleaded and lost, the tenant sued to have in value, and upon a Writ to extend the land, returned 40 s. paid, and a Writ issued to the Sheriff of the forraigne County to extend Land to the value, who returned that he had done so and delivered it, upon which the vouchee had a reextent, because of more value &c. and that returned, that he had made restitution of the surplussage, upon which came the tenant and alledged the restitution unequall, because he had redelivered more then he ought, and had a re-extent and that without a *scire facias*, and the opinion there was, that common doth not lie in extent, M. 22 E. 3. 29. extent.



*extent* 19, and see that a Wood was extended to have the profit of the herbage by *elegit*, 21 E. 3. 16. *Scire facias* 111.

If in waste against a termor, where a rent is reserved, the same terme be extended for the damages, and the rent is not recooped in the extent, & the Plaintiff accept of the extent, he hath no remedy to hold over for the Rent afterwards 44 E. 3. 16. *Scire facias* 88. 44 E. 3. 14. A man recovered damages in waste & had an *elegit*, the party brought a *Scire facias* to have six Acres ley land, and shewed that he had received all but ten shillings, which he tendred in Court, and prayed *Scire facias*, which was granted, vi. 47 E. 3. 12. a. ac. and if the party had found the land, yet he could not hold over.

### I I. Where Tenant by extent, shall hold it over his Terme

**H**EE shall be concluded by the generall acceptance of the Extent, but where after the terme, the tenant sueth a *Scire facias* to have back his land, the Plantiffe may say, that he hath not levied his Costs and charges, and to retaine the Land, 15. H. 7. 16.

It was said that if the land be suddenly drowned, or burnt by wild fire, the Connusee should hold over his terme, 11 H. 4. 7 H. 7. 12. 15. H. 7. 14. but see 19 E. 2. *Execution* 146. where the Connusee prayed to hold over his terme, because the land was destroyed by Warre, vi. 33 H. 6. 47.

And it is said, if the Plantiffe doth not take the profit during the terme where the house is burnt &c. that yet the body is discharged at the end of the terme, 15 E. 4. 5.

### III. Where extent shall be for the Vouchee for the Land demanded, and where for the Land recovered in value,

**I**N Dower, the tenant vouched the heir in a forraigne County, upon whose default at the summons a Writ issued to extend the Land demanded, and afterwards a Writ to the Sheriff of the forraigne County, to seise into the Kings hands, lands to the value, and to summon the voucher who appeared M. 20 E. 3. *extent* 22 E. 3. 20.

Upon a grand Cape *ad valentiam*, the Land shall be alwaies extended 6 E. 2. *Vouchee* 258.

And in the same County execution shall not bee in value, but a Writ to extend the Land shall issue forth, and the same shall be returned, 15 H. 6. *extent* 4.

The vouchee had a *Scire facias* because he surmised, that more land was

extended in value then ought to have been, and it was abated, because it was not brought in Town or Hamlet, 22 E. 3. 1. *Brief* 378. and with the extent agrees 12 E. 3. extent 19. But it seems the one Land or the other shall be extended for the Vouchee, and that he shall have the Surplusage delivered back to him, M. 12 E. 2. extent 6.

It was said, that upon a Recovery in value, the Extent shall be according to the value, that it was at the time of the alienation with warranty, not as it is now, if of greater value &c H. 6 E. 2. *voucher* 258.

In Dower the Heir was vouched in divers Counties, and answered, as having nothing by Discent, the Demandant did averre that he had Assets where the Writ was brought, and in S. for which a Writ issued to extend the Land in Dd. and also a writ to the Sheriff of S. and *Nihil* returned, upon which the Demandant prayed Seisin against the Tenant, but he said, that he had Assets in Mid. where he was also vouched; the Demandant sued forth a Re-extent, the vouchee prayed a Re-extent of the Land in Dd. because it was too high, and had it. Afterwards the Tenant did surmise that Assets is descended in the County where the writ was brought after the *Nihil* returned, and prayed that the Demandant might have Seisin against the Vouchee in the same County, and others, there the Demandant recovered against the Tenant presently, so it should be here, but because Judgement is given first that he shall recover against the heir, if he hath, otherwise against the Tenant, that Land which came to the heir afterwards, is chargeable, P. 16 E. 3. *Voucher* 85.

IV. *When and within what time he must pray a Re-extent who will have it, and where no re-extent shall be.*

IN Dower upon Voucher in a Forrein County, the Land in the one County and the other was extended, and the value seised into the hand of the King; now came the Vouchee and shewed, that his Land was extended but at 15 l. whereas it was worth 50 l. and had a Re-extent, although the first was entred upon Record, and that he should have come when the extent was returned, 20 E. 3. *Extent* 1. and so if he sue a Re-extent presently within the year, that he shall have it against the heir or Successor, without a *Scire facias*, M. 12 E. 2. *Extent* 6. and yet there he had sued a writ of extent before, returned *tardè*, but if he had not sued presently, he should not have had a Re-extent without a *Scire facias*.

A Re-extent is grantable in the Kings Bench, as well to the Defendant as to the Plaintiff, but he ought to come at the day of the extent returned, for afterwards he hath no remedy. *Quare* if the Case were upon damage recovered, 22 Aff. 44. *Extent* 2. and upon an *Elegit* a Re-extent may be for the Defendant, 15 E. 3. *Scire facias* 16.



But upon Recoverie of a Statute Staple, or Merchant, upon an Extent too low, the Defendant shall not have a Re-extend, but shall tender the money in Court, and upon an Extent too high, the Plaintiff shall not have a Re-extend, but the Land shall be delivered to the extendor, who shall presently answer the debt, *M. 15. H. 7. 15.* But this prayer of the Plaintiff ought to be the same day that such high extent is returned in Court, otherwise he shall not be helped, *44 E. 3. 2. Extent 11.* It was said, that for the Conusee of a Statute Merchant, a Re-extend lyeth at the same day of the return, not after, but for the Conusor no Re-extend &c. but he ought to pay the money, *19 E. 3. Extent 12.*

Upon a Recovery in value, the Sheriff returned the extent of the Land, the Vouchee prayed it might be entred; for the Demandant shall recover against the Tenant, and he over *salvo* to the vouchee his advantages, if after he would challenge them, and then he shall have extent, and if it be found more then it was before, the same shall be recooped, and this Re-extend shall be made in the presence of the parties, and if the Land be in one County, he shall have an extent in the *Haberi facias ad Valentiam. T. 7 H. 6. Extent 4.*

Upon voucher in a forrein County, the Land shall be first extended where the writ is &c. and then the Land in value; and upon that the Vouchee comes time enough to have a re-extend, *M. 22 E. 3. Extent 19.*

Upon default of the Vouchee in dower, a grand Cape *ad Valentiam* issued returnable with the extent, the Voucher came and counterpleaded the Warranty, and adjudged against him, and now he said, that the Land is extended too high, and prayeth a re-extend, and by *Berry* he shall not have it, because he did not pray it at the first day when he did counterplead the warranty: But see the Judgment upon it was that he should warrant the Land, and that the other should recover, wherefore. *Quare*, of his prayer, *H. 6. E. 2, voucher 258.*

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V. Where the Land shall be delivered to the extendor, where not; and how they shall pay the debt.

IT was doubted, *15 E. 3.* if goods extended too high upon *Elig* should be delivered to the apprisors; for it seemed, this is onely upon a Statute Merchant, and there it shall be done at the day of the extent returned onely, *44 E. 3. 2. extent 11.* and upon damages recovered, it seems, that he shall have a re-extend, and no delivery shall be to the extendor, *22 Aff. 44.*

Note if the Conusee of a Statute prayeth deliverie of the extent too high to the apprisors, it was holden that they shall have the same *21 E. 3. 26. acc.* dayes for payment, as the Conusor had, and shall not pay the money presently,

seely, for the Statute is, that they shall answer presently, not that they shall pay &c. and so it hath been used, P. 2. H. 4. 17. extent 10.

It was doubted whether Lands extended upon a Statute Merchant should be delivered to the extendors, because the Statute of *Alton Burrell*, speaks of goods and burgage that shall be delivered as Chattels, and not of Lands, but by Statute after. But afterwards the Land was delivered to extendors for the same Term which the Conusee had, 21 E. 3. 21. extent 14. 40 E. 3. 16.

*VI. Where a Re-extent shall be granted to the Demandant, or Tenant, where not, and where for one Parcener, where not.*

If a lease for years, whereof I have a Rent reserved, be extended for me upon *Elegit*, not recooping the rent, I may shew the same at the day, and as it seems, I shall have a re-extent, 44 E. 3. 2.

Land of the Lessee was extended for damages recovered in Wast and he said it was too low, and had a Re-extent. *Quere*, for so he might have shewed. 21 E. 3. extent 3. to agree it, although he might have back his Land upon payment, as well upon the *Elegit* as upon a Statute Merchant, 31 E. 3. extent 13. and upon an *Elegit* upon Recognisance, the Defendant had a Re-extent, and good without a *Scire facias*, 15 E. 2. extent 17.

In Dower the Land of the Tenant was extended too low, so as she had not so much in value &c. upon which he had a Re-extent, yet it was said, that it was her own suit. 19 E. 2. extent 8.

Upon a Statute Merchant, no extent for the Defendant, 19 E. 3. extent 12. and after extent upon *Elegit* made and delivered, the Defendant shewed part of the money in Court, and as to the remnant said, that the Land was not well extended, and prayed a re-extent, and a writ to warn the Plaintiff to answer, and he could not have it, without suing an *Audita querela*, 13 E. 3. extent 16.

One sister of full age sueth Livery by extent, the other then cometh of age, she may have a Re-extent if she will, 2 E. 3. 20. extent 5. and Livery & the same book, if the Partition were unequall.

If two sue execution of a Statute Merchant, and one prayeth an extent in one County, and the other in another, they shall not have Re-extent, 11 E. 4. 9. Extent 9. 4 Chock.



*Where one shall be put to a Scire facias to have an Extent.*

**S**Ee 15 E.2. *Scire facias* 115. that upon *elegit* it is at his Election, but it is good, although it be upon suggestion, and good upon a Recovery in value, without *Scire facias*, 12 E.2.

One Parcener at full age, hath Livery by Extent, the other cometh of age and hath a *Scire facias* to extend, the Defendant is by Protection, yet a writ issued to the Sheriff, to extend the Land, and being found unequal, a writ issued to warn the other Sister, who challenged the Re-extent made, she not being warned, and without her presence, for which cause the Land was re-extended again, 2 E.3.20. *Livery* 8.

*Where Extent shall be after Re-extent.*

**U**Pon Voucher for the Tenant, *vide Divison* 6. 19 E.2. and *Divison* 1. Re-extent for his Vouchee, and afterwards an Extent for the Tenant, 22 E.3. The Demandant had a re-extent, because the first was not served, and the Vouchee had a Re-extent, because it was not equal, 16 E.3. *Voucher* 35.

*Where Extent shall be granted to him who is a stranger to the Record.*

**V**Pon a Recovery in value against two, the Sheriff delivered all the Land of one, in the hands of the Feoffee, he hath no remedy, because he is a stranger, H.12 E.3. *extent* 15. and the Feoffee of the Co-nusor of a Statute, had not a Re-extent upon the first found too low, because upon the money paid he might have his Land, 2. *Vide* E.3. *extent* 18. See contrary, 43 *Ass.* 18. but agreeing to 20 E.3. is 17 E.3.36. *Suggestion* 15, and the reason, is because he is no party &c.

*Falsifying*

# Falsifying of RECOVERIE.

1. *Where the Demandant shall falsifie a Recovery had against the Tenant, hanging the Writ in the Title, and where by Covin, and where he shall shew the cause of the covin.*

**I**n a *Præcipe*, the parties were at issue, and now the tenant saith, that after the decree in continuance, a stranger hath recovered the land against him in an *Assise*, where he pleaded in Bar, & traversed the Title of the plaintiff, which was found against him, & demanded Judgment of the writ, the Demandant saith, that the same was by Covin, with that, that he will averre that the Tenant did not disseise the plaintiff in the assise. *Babbington*, he shall not falsifie in the same point tried, when it goes but to the writ, but if it were pleaded in Bar of the action, he might well falsifie in the same point, being a stranger to the recovery. *Martin*, if a man recover upon a false Title, he who is a stranger may well take Title upon the same matter, but not where he recovers upon a good Title, nor there by Covin, if he do not shew the cause of the Covin, 14 H. 8. 4. 7 H. 4. 15. acc.

But a Recovery by default, confession or not pleading shall be avoided by Covin generally alledged by a stranger to the same &c. for he may shew what matter the Tenant might have pleaded, or traversed the Title of him who recovered &c. *M. 9 H. 6. 41. Fauxifier Recovery 5. vide 16 E. 3. Fauxifier 34.* where the writ was abated upon such Recovery pleaded: notwithstanding covin alledged by the Demandant, because he would not shew the cause of the Covin &c.

In a *Formedon*, the Tenant vouched R. who vouched S. who appeared &c. and R. (*relicta vocatione sua*) said that a stranger had recovered against the Tenant in a *Formedon* by action tried, and had sued Execution, and demanded Judgment of the Writ, and the opinion was, that the writ should abate, although he did alledge the Recovery to be by covin, and shewed for cause, that the Tenant might have pleaded otherwise, and that he also yet takes the profits, if not that he will say that the Tenant doth continue his Estate, without that that the stranger did sue Execution. *P. 41 E. 3. 11. Fauxifier 30.*



*Falsifying of Recovery.*

See there by *Finchden*, that a Recovery by action tried, shall never be intended by covin, without shewing the speciall matter, See thereof, 17 E. 3. 72. 15 E. 4. 4. and 10 H. 7.

A Recovery by a writ of a later date by reddition &c. shall not abate my writ, if the Title be not apparant, as if the wife of the Ancestor recover in Dower against the Heir, against whom I have a Formedon depending for the third part, the writ shall abate, but good for the two parts, and he may averre that she had not Right of Dower to maintain the whole, and recovery by a later Writ by action tried mean shall abate my Writ: See the book, for it is a good Case, 20 E. 3. *Brief* 687.

But a recovery meane by confession, if it were in a Writ of an Elder Date, doth imply any Covin, and therefore the demandant ought to traverse the title &c. or shew speciall cause of the Covin, &c. 9 H. 6. 42. 45 E. 3. *Briefe* 589.

In a Formedon the Plea did remaine, for the nonage of the Vouchee, and at the re-summons the tenant said, that after the last continuance, &c. a stranger had recovered against him in a formedon by confession, whose Estate he had &c, and it was agreed no Plea to the Writ, but a good barre presently of the title of the stranger, for he said that the title of the demandant was meane between the recovery and the title of the stranger, and *Brian* said, that by the confession appeareth Covin, 5 H. 7. 39. 40 E. 3. *etc.*

In a formedon the Tenant did plead recovery, meane by tryal in Dower of a later date, the demandant said, that before &c. that the tenant had rendered the same land to the wife for her Dower &c. and that the Action was brought by Covin &c. and upon the first render confessed; the Writ was awarded good, 1 M. 7 E. 3. 60. *Briefe* 443.

A recoverie by a latter Writ by confession &c. although it be by good title, shall not abate my Writ brought before 7 H. 4. 15. otherwise it is of an action tried or of an eigne Writ and good title, 45 E. 3. *Brief* 589. 28 E. 3. *Briefe*, 428, 10 H. 7. 1.

If tenant in taile doth discontinue, and the discontinuee is disseised, and the issue in tail bringeth formedon, dependant with the discontinuee doth recover in an Affize of an elder date &c. by that the formedon shall abate, yet he hath a good title: but he who pretends the recoverie to the Writ needeth not to aver the title of him who recovered by Writ of an elder Date. Also if the issue in taile do cause by Covin the stranger to disseise the discontinuee, to the intent that he may recover against him in a formedon, and he doth so, the discontinuee by that matter shall falsifie that recovery in an Affize, whether it be of a later or an elder date, 10 H. 7. 2.

It was found by Office that the tenant of the King died, his heir within age, who entred and was ousted by H. by Covin of B. who recovered against H. &c. although that B. hath a good title and recover by trial, yet awarded the same should abate by reason of the Covin, and the King should

should be answered, the profits &c. 41. *Affise*. 28. *Fauxifier*, 4 *see. acc.* 44 E. 3. 46. *Fauxifier*, 19 and see 11 E. 4. 2. and 15 E. 4. 4. but see there, that the causing of him who hath right or title to enter, shall never be said Covin, as a woman who hath title of Dower, causeth the heir to enter upon the disseisor, or the issue in taile to enter upon the discontinnee, for a condition broken. *See these Cases*, 19 H. 8. 5.

As it is said before Sect 10. that the discontinnee shall falsifie a recovery of the issue in taile against him which disseised him by Covin, so it is, if the issue himselfe disseise the discontinnee, and pendant his Affise, he is ousted by a stranger, by his Covin against whom he recovers in a form-don, &c. 25. *Affise* 1. 7 E. 4. 19. 22. *Aff.* 92.

Tenant for life by Covin causeth his son to bring *consimili casu* against him, and confesseth the action, this is a forfeiture of his estate 5 E. 3. *Entry congeable*. 42.

The Vouchee did alledge that he did recover in *dum fuit infra atatem* against the tenant, and the title of the Plantiffe was meane &c. and the recovery by tryall and depending this Writ now &c. and did not maintaine the title of his recovery; for which the demandant did falsifie the recovery, shewing that the vouchee afterwards being of full age, did enfeof the tenant &c. 30. *Aff.* 1. *Fauxifier* 3.

Recovery of a stranger in an Affise of a late date, it is no Plea without maintaining the title of the recovery against me &c. for it is but as an alienation, 9 E. 3. 12. *Brief*, 455. agrees, upon recovery meane by confession, 10 E. 3. 4. *Brief*, 689. and so may the tenant by his folly be charged with damages in both actions, *ibidem* and 31 E. 3. *Brief*, 343.

And if this stranger be put out after he hath recovered, he shall have an Affise if he had entred before my judgement, otherwise not without averring his title, 10 E. 3. 4. 7 H. 6. 18. by *Newton*, but if a stranger doe enter depending my Writ, &c. he shall not have an Affise against me putting him out by judgement, nor shall falsifie my recovery without proving a better title to himselfe 9 E. 3. 12. and it is all one for recovery depending the same Writ, and entry depending it, if he have an eigne title 7 H. 6. 18. 42. *Aff.* 3.

So recoverie by default confession reddition by a late Writ is by an alienation, if he have not right, and if so, then a naked entry will help him, and the right title ought to be averred as before, 5 H. 7. 40. 10 H. 7. 1. 5 E. 4. 5. 15 E. 4. 4 and 3 H. 6. 34. but it is there holden, that the disseisee by his entry, pendant the Writ, shall not falsifie in a *Scire facias*, without making title; no more then if he enter after judgement, also *Martin* thinks that he shall not falsifie in a *Scire facias*, but being a stranger shall have an Affise, and there shall falsifie; *Scire facias* 24.

II. When



## Falsifying of Recovery.

II. Where a stranger to a Recovery shall falsifie in a point tryed, and in another matter at his pleasure, which is to the Title, and in what actions.

**I**F the Tenant plead recovey mean by a stranger against him in an assise the demandant may well say that the tenant now did not disseise the Plaintiff in the Assise, 9 H. 6. 41 *Dyer & Brown* agreed the same, 8 Eliz. Also I shall say that the tenant might have barred him of the Assise by another Plea.

A woman to save her Dower, shall falsifie a recoverie had against her husband, by saying, that he might have pleaded another Plea; but not denying the point tryed, 36 H. 6. *Fauxifier* 27. And this is by the Statute of *Westminster* 2. cap. 4. yet the Statute speaks only of default and reddition, But *Fort* sayd, it sufficeth if the Husband hath a better Right, see of this, 47 E. 3. 13. *Fauxifier* 31.

In a *Scire facias* upon a Recovery in a *Contra formam*, Collations against an abbot brought by a stranger, he may well Falsifie in the same point tried, 23 E. 3. *Contra formam*, Collations 3.

He who is party or privy, shall not falsifie directly in the point tried, but hee may do it when he confesseth it and avoydeth it, as where a disseisin was found, he may well say, that the same was not before such a Fine, &c. or that the same was not after the death of R. &c. 10 E. 3. 13. *Estoppel* 151 and 145. and it is there sayd, that he in the Remainder, shall falsifie in the point tried, because he cannot have an attainr &c.

In an assise, the Seisin and disseisin was found for the Plaintiff, who brought a *scire facias* against a stranger, he sayd, That he against whom &c. had never any thing in the Land, but one A. was seised whose Estate he hath, and it was not allowed, *Quare*, for it seems a good plea for a stranger, 31 E. 3. *I stoppel* 241. *Fitzh.* thinks it hard that he should estoppel, See 36 H. 6. 13.

III. Where the Successor of a Parson, Viccar, &c. shall falsifie a Recovery by Reddition, action tryed, or otherwise, where and how in a *Scire facias*, against them, and in other actions against them.

**I**N an annuity against a Parson, the Plaintiff claimed by prescription, the Parson prayed in ayde of the Patron and Ordinary, had ayde, and upon their default, he confessed the action, the same shall bind the Successor and he shall not traverse the prescription in a *Scire facias*, against him, 9 H. 6. 2. 34 H. 6. 2. 12 H. 8. 8. & 4 H. 7. 2. *Fauxifier* 24. 22 H. 6. 28. 29 E. 3. 34. Otherwise it is where he confesseth the action without ayde proper, 16 H. 7. 7. Cessavit

*Cessavit* against a Parson, who confessed the Action, his Successor in a *Scire facias* shall not falsifie this, to traverse the seisin &c. but he is put to his *Juris utrum*, *M. 10 H.6.5. 22 H.6.28. Plow. Com.291. vi. 10 Ed.4.16. Fauxifier, 18. and 19 H.6.39. Fauxifier 14* agree, where the Recovery against the Predecessor was by Action tryed.

But it seems he may well Fauxifier in a *Scire facias* against him in the same point tryed, because hee is privy and may have an attainr; not when the Jurors are dead, so as he cannot have attainr; *10 E.4.16. 19 H.6.39. 13 E.4.3.* but he may well falsifie, by saying, that the Plaintiff had released before, &c. or that he hath broken the Condition, upon which &c. *10 E.4.17. Fauxifier 18.*

The Successor of the Parson against whom &c. shall not falsifie, because that the Parson was dead at the time &c. in a *Scire facias* for this is Error, *29 E.3.34. Scire facias 152, 6 E.3.27.*

The Successor may well say against a Recovery, against the Parson, by Action tryed, that hee was not parson at the time, or that he was professed at the time, or that he mis-named, *34 H.6.2. 21 E.4.8. 12 Id.4. 15.*

If a Recovery be had against a Parson in a *Juris utrum*, the Successor shall be bound for ever, although it be by default or reddition, and without Aide prayer of the Patron and Ordinary, *7 E.2 Fauxifier 11.* but a Successor in a *Juris utrum*, may well falsifie a Recovery against his Predecessor in a Writ of Right, by Herle, *8 E.3.29.* and this is the reason, for if the Tenant in a Writ of Right loseth by default, without joyning of the Mise, hee may well falsifie the same in another, Writ of Right by *Kible, 7 H.7.11.*

A Parson in a Writ of Right may well joyne the Mise, confesse the Action, or render the Land, and the same shall bind his Successors for ever, *29 E.3.34. Scire facias 152.* But see there, that he shall not falsifie, for this, that his Predecessor was dead at the time of the Judgement, for this is but error.

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**IV.** Where the Successor of an Abbot, or Dean, &c. shall falsifie a Recovery had against the Predecessor by Confession, or otherwise, where in a *Scire facias*, or in other Action, and in what Point.

**A**n Abbot shall not falsifie a Recovery of an Annuity had against his Predecessor by Confession, as to say, that he might have pleaded a release, &c. for he is as Tenant of the Land, *20 H.6.45. 9 H.6.3.* So if he acknowledge an Obligation, *10 E.4.18.* So if he confesse the same in *Cessavit*, *20 H.6.46.* But *Strange* sayd, If the Abbot lose in a *Scire facias* *quod reddat*, without cause, the Successor shall falsifie it in a Writ of



of right, 9 H. 6. 3. and therewith agrees, 7 R. 2. *Abbot* 7.

And in the first case, if the Annuity were of the grant of the same Predecessor, the Successor shall falsifie the recovery, 12 H. 4. 12. if he hath not *Quid pro quo*, as Title for Annuity. &c. 39 Ed. 3. 17. *Fauxifier* 28. 7. 11 H. 4. 67 upon debate of Tytles, 39 Ed. 3. The Successor bound by Composition of Titles for Annuity, to which the Defendant only was party, and the Successor could not have a Writ of right, yet the recovery was by action tryed, and not in the Right, &c. 38 E. 3. 22. *Aide of the King* 50.

If an Abbot be vouched, and confesseth the Deed of the Abbot and Covent, the Successor shall be bound, although this be false, for the Abbot &c. being brought to answer in Court, shall bind the house by his own confession, although not by his deed, 34 Ass. 7. error 81 and it is sayd, 9 H. 6. 3. That it is the folly of the Covent to choose such an Abbot, or Dean &c. See 20 H. 6. *Abbot* 22.

*Culpepper* saith, That the Successor shall not be bound by the confession of the Predecessor of a Deed, as the Deed of the Abbot and Covent, where it was only the Deed of the Abbot, because it was never good, 12 H. 4. 12.

If an Abbot loose in a *Precipe quod reddat*, by action tryed, the Successor may well falsifie in any other matter collatterall, *Per Curiam*, 7. 32 E. 3. *Fauxifier* 8.

V. Where the Issue in Tayle shall falsifie a Recovery against the Ancestor in a *Scire facias* against him, and where he shall be put to his Formedon, and where hee may enter, and in what point he shall falsifie, and by what Pleas.

THE issue in tail shall alwayes falsifie a Recovery had against his Ancestor in a *Scire facias* against himself, if the recovery were not by Action tryed, 12 E. 4. 19 and 20.

Yet *Martin* sayd, That the recovery doth disprove the possession, and that the issue shall be put to his Formedon, 10 H. 6. 5. *Fauxifier* 13.

4 H. 7. 3. But see 10 H. 6. 5. The issue in taile shall not falsifie a recovery against his Father, in a *Scire facias*. because the recovery doth disprove the right.

But by the *Scire facias*, the issue hath day to answer, so he shall falsifie there, as he in the reversion shall falsifie a recovery against Tenant for life, in his *Terminus qui preterit*, because that that is his proper Action, 34 Hen. 6. 2. *Prisor* agrees there, fol. 30. if the recovery be not by action tryed, vi. 37 H. 6. 32. 7 H. 4. 17.

If the Issue in taile enter after the death of his Ancestor, before execution, if hee who recovereth by default, put him out, he shall falsifie the same

same recovery in an Affise, 28 Affise 32. See *Littleton Remitter*, how the issue shall falsifie a recovery executed against his Father, and that if the Father afterwards disseise the Recoveror, and dyeth seised, the issue is remitted. *Quere* if it be a difference, of a Discent before execution when the recovery remains executory.

If a Recovery be had against Tenant in taile by triall, and the Jury find, *Ne donec pas*, the issue is barred, and hath no remedy, but Attaint; contra, if it be by default, or for other matter which goes not to the gift, there he shall falsifie, 34 H.6.13. acc.

*Fortescue* saith, That the younger Son shall falsifie a recovery had against his Father, of Land in Burrough English, in the same point tryed, because he ought to have the Land, and he cannot have an Attaint, 22 H.6.28.

The issue in Taile shall not falsifie a recovery had against his Father in the same point tryed in a *Formedon*, nor in no action, but in Attaint, 19 H.6.4. and therewith agrees, 15 E.3. Age. 95. where he, who claimeth to beir of him in the reversion, whereas hee was generall heir of the Tenant in taile, against whom, &c, could not falsifie the tryall, as to maintain the gift, where it was found, *Ne donne pas*, in a *Scire facias* against him, but shall have an Attaint, or a Writ of right.

If Tenant in taile lose in a Writ of Right, and recover in value, or he hath aliened and taken back in fee, before the Writ brought against him, and dyeth, it seems that the issue shall falsifie, for that he was not seised by force of the taile at the time, and so to say, that he had nothing at the time, &c. 12 E.4.14.

Tenant in taile alieneth, and takes back in speciall taile, the wife dyeth without issue, the Tenant in taile impleaded, voucheth one who enters into the Warranty, and afterwards makes default, upon which the Demandant doth recover, and Tenant in taile over in value, and dyeth before execution; the heir of the Recoveree doth enter upon the heir of the issue in generall tail, who re-enters; and good, by *Litt.* because the recovery was not by action tryed. Also he was not Tenant in taile, at the time, also this recovery in value shall not helpe the Issue, because the ancestor was not in of the generall tail at the time, and all this was agreed: But if the recovery had been by action tryed, the same had remained always executory against all the issues, &c. *M.12.E.4.19. Fauxifier 20.* and although the same recovery was in a Writ of right, the issue in taile might well falsifie the same in a *Formedon*, because the Ancestor was seised of another taile at the time, 13 E.4.1. *Fauxifier 21.*

The issue in taile could not falsifie a Tryall betwixt his Father and his Villaine, who was found Franke in the same point, although that all the jurors were dead, so that he could not have an attaint, by all the Justices, but he might confesse and avoid, as, that he was frank at the time by the admission of the same Tenant in tail, by *Lit. 13 E.4.3. Fauxifier 22.*

The issue in Taile shall falsifie a recovery against his Ancestor, in all points,



points, if not in the same point tryed before, 4 H. 3. *Fauxifier* 24.

See 19 R. 2. *Fauxifier* 46. Where it seemes by the Argument, that the Issue should falsifie in the same point tryed, where the Jurors were dead, &c. in a *Formedon*,; for the Tenant did aver the life of some of them, &c. Vi. 13 E. 4. 3. *contra* by all the Justices.

V I. Where he who hath an Estate, or Title mean, between the Title of him who recovereth, and the Writ shall falsifie, where not, and where he who hath Title between the Writ and the Recovery, how, and by what Pleas, and where in Dilatories.

**F**ortescue sayth, If the Tenant plead a Recovery against a stranger, and that the Title of the Demandant is mean between the Title of that Tenant and the Writ, yet he may well falsifie in a collateral matter, as to say, that he against whom, &c. might have pleaded *excuse*, or to say, that the Tenant dyed pendent the Writ, that the Tenant was nonsuit, or that the Tenant had nothing, or that the Land is in another County, and all the matters proving the recovery void, but that stranger who hath Title mean between the Writ and the Recovery, shall not falsifie by no plea, but by those which prove the recovery void, and which the Tenant himself might have pleaded, and were in the point tryed, but neither the one nor the other shall not falsifie in Dilatories, as by making husband, Entry hanging the Writ, Outlawry, Excomungent, Ancient Demesne, or that the Land is within the five Ports, for these do not disprove the Title, 36 H. 6. 23. *Fauxifier* 15.

But contrary in this, That a stranger who hath an Estate mean shall falsifie, by Misnomer, or Joyntancy, or Coverture, and Error in fact, death of the Tenant, that he may well falsifie in cheif: But Error in record, none shall plead but only the party or his heirs, T. 9. E. 4. 11. and 13. *Fauxifier* 17. and that hee shall say, that he who recovered had a Co-heir or Co-Executor not named, &c.

Entry mis-supposed by Writ, is no cause of falsifying, 36 H. 6. 23. *Ed.* 3. 10. That a stranger shall falsifie a recovery in *Terminus qui preterijt*, of a Lease to A. B. as to say, that the Lease was to B. D.

In a *Formedon*, the Tenant pleaded a recovery in a *Formedon*, against a stranger, and the Title of the Demandant mean between the Title of the recovery, yet he may well falsifie, as to say, That that Tenant did give him, and enfeoffed him, against whom he recovered, hanging the Writ, or before it, for no Remitter, untill that seisin which hee had by Diligent, be lawfully defeated, M. 7. E. 4. 19. *Fauxifier* 16. 25.

A Recovery *Prima facie*, doth destroy all titles, and Heirs shall not traverse a title mean shall never traverse a point tryed, but may well make a title void.

But aver, that he against whom &c. had nothing, and a Title before to be after memory, also it seemes by *Herle*, that that shall not be the Title which he hath made by his Writ, if he be Plaintiff, 5 E. 3. 5. *Fauxifier* 1. It was a Recovery in a Writ of Right.

If the eldest brother entred after the death of the Ancestor, and enfeoffeth a stranger, and dyeth; and the youngest son brings Mortdancer of the issue of the common Ancestor, and recovers upon the points of the Writ found, now the issue in taile or any stranger who hath Title mean, shall falsifie, as to say, That the eldest son entred &c. and aliened &c. for that matter proves that he hath not title to recover &c. 6 E. 3. 64. *Fauxifier* 2.

In Assise, The Tenant pleaded recovery in a *Dum fuit infra atatem* of the devise of his Father and the Title of the Plaintiff mean, the Plaintiff shewed seisin of the Tenant and that he enfeoffed him against whom &c. So the Recovery upon the Lease of his Father false and feint, &c. and after the Assise was awarded, P. 30 E. 3. 7. *Fauxifier* 36.

Recovery pleaded in an Assise, and the title of the Plaintiff mean, he may well falsifie, as to say, That the Tenements are in another Town, where D. and S. are severall Towns, yet he against whom &c. should be stopped by his admittance, 22 E. 3. 5. *Assis*. 126.

In Dower, the Tenant saith, that he did recover in an Assise against a stranger, and that the Title of the husband was mean, between the Disseisin and the Recovery, the Demandant may well say, that the Disseisin was out before the Title of the husband, or that he was not disseised, 24 E. 3. 11. 10 E. 3. estopple 155.

He who hath an Estate Meane between the Writ and the Recovery, may well say, That he who recovered, did release to the Tenant, hanging the Writ, or if it were in an Assise, and the Tenant aliene, depending that, the Alienee may well say, That the Demandant did accept Homage of him, hanging the Writ, and he shall falsifie by depending in an Assise against him who recovered, &c. For these exceptions the Action, 21 E. 3. 18. *Fauxifier* 37.

He who hath his Estate pendant the Writ, shall say, that the said &c. against whom, &c. had not any thing the day of the Writ, nor the day of the Judgement, and yet hee was in by the same &c. and the recovery was by verdict, so as A. was estopped, 17 E. 3. 67 *Fauxifier* 38. *H. H.* 33.

*Scire facias* against A. upon a recovery against W. Tenant for life, A. who hath the Estate, pendant the Writ, against W. sayd that W. had the day of the Writ brought, and as seems may well falsifie by plea, yet the Tenant could not have Ayde of him, in *Consimili casu*, nor he could not be received for the estate made pendant the writ, 32 E. 3. Err. 73. *Err.* 3. It is said, That he who hath Title, pendant the Writ, shall not falsifie in the Title, but only in matters proving the recovery, and upon which the party himself might have Error, but not in the point



point tried in the Title, nor in dilatories, which are not Error, 36 H. 6. 33.

In Affise the Tenant pleaded Recovery in an Affise against a stranger by T. who enfeoffed his Father, &c. and the Title of the Plaintiff mean between the Disseisin and Recovery; The Plaintiff said, that before the Recovery the estranger acknowledged a Fine, and took back an Estate to him and to his wife Plaintiff, so she was seised, &c. and traversed the Disseisin made to T. so the Recovery was a feigned Recovery, &c. And it was holden a good Replication, 22 Aff. 28.

VII. Where party, or privy to a Recovery shall avoid it.

**T**He Issue in tail shall falsifie, as to say, that his Ancestor had not any thing at the time, although that the Ancestor himself hath vouched, so as he is estopped, 12 E. 4. 14.

And if the Recovery was by default before appearance, the Tenant seised in fee, yet the party may well say, that he was not Tenant at the time, but such a one whose Estate, &c. So he may say, that he against whom, &c. was dead at the time; That the Land is in another County, &c. Also *Fortescue* conceives, that although he himself appeared, yet his Heire may well say, that he had nothing, &c. and shall not be estopped. *Quere* H. 6. 6 H. 6. 33. That the Tenant himself shall not falsifie by this, that the land is in another County, after he hath appeared and pleaded, see 18 Aff. 16 17 E. 3. 67.

A man recovers in an Affise against an Infant, upon a plea of the Bailly, where the Infant had nothing but the Reversion after the death of T. Tenant for life. Now after the death of T. the Infant may well enter, and being put out may have an Affise, 26 Aff. 4. And if the Infant had nothing but by Feoffment after the recovery, the Law is the same, *ibid.* Aff. 235.

In a *Scire facias* upon a Recovery in Waste against the same Tenant, is no plea that he had nothing at the time as to the Damages, although the Recovery were by default, but a good plea for the land: Also upon a Recovery in Cofinage, the same plea shall oust him of execution of the Damages. Also Non-tenure shall not avoid an Execution in a recovery in Waste; and therefore to say, in such *Scire facias*, that he had nothing but in Villenage, as the Villain of T. is no plea. Also Waste does not lye against the Lord of the Town, or Villain, and so no plea, &c. 4 E. 3. 18.

It seems by *Finchden*, that against a recovery in Affise alledged against a stranger by default, the Tenant shall not say, that he himself was Tenant, &c. for if it was not attached, he shall have a Writ of Detour, so he had another remedy. Also if he saith, that he against whom, &c. had another

thing, he ought to shew who was Tenant, and that he hath his Estate, &c. *4 E. 3. Fauxifier, 32. Quare* of the last reason; and see *14 H. 4. 33.* a difference taken betwixt a Fine and a Recovery.

The Tenant shall falsifie a Recovery had against himself, as to say, that he had nothing the day of the Writ brought, nor depending it, although he hath purchased it after the Judgment, &c. *48 E. 3. 19.* See for that *7 H. 6. 19. 36 H. 6. 33.*

In a *Cui in vita*, the Tenant pleaded a Recovery against the Plaintiff and her husband by default; The Plaintiff may well say, that he who recovered, entered, hanging the Writ: or that the Husband died, hanging the Writ, for these prove the Writ abated in Deed, *21 H. 6. 49 Fauxifier 26.* and *19 Aff. 8. Error 1.* but Joynt-tenant brought Error, for that the other was dead at the time, and had all again: And that he shall have an Assise of the Moyety, *vide 6 E. 3. 37. Saver default, 67.* and *19 E. 3. Averment 31.*

A Recovery of Lands in one Town is not a bar of other Lands in another Town, and the party himself shall falsifie for such matter, *22 E. 4. 5* *20 E. 3. Fauxifier 12. 4 H. 6. 24.* But this matter may be well helped by averment, that the same land was put in view, *45 E. 3. 44.* see *6 E. 3. 1. Aff. 168.* that that matter shall not help him, if not, that the Town be confessed by the one and by the other. And *26 Aff. 16.* the same Law holden of a Fine in another Town, *6 E. 3. 1.* But if a Recovery be alledged of the same land in another County by action tried, the party shall be estopped, not if it be by default, *18 Aff. 16* and *29 E. 3. Aff. 81.*

Where the Tenant pleads a Recovery, the party himself shall not say, that it was upon the default of his Vouchee, who was returned summoned, whereas in truth he was dead, &c. but shall have Deceit against the Sheriff, *9 E. 3. 1. Fauxifier 40:*

If the Tenant dye, hanging the Writ, this is Error, but the Heire shall not falsifie in an Assise, *28 Aff. 17.* Also he shall not plead the same in a *Scire facias*, *27 E. 3. 88.* see *21 H. 6. 49. 32 E. 3. Aff. 99.*

The party nor his Heire shall not falsifie a Recovery had by a Prior, Dove, and removable by action tried by his estoppel, *39 E. 3. 24. Fauxifier 12.*

*M. 15 Jac.* An Infant brought Assise for Lands in *Midd. in B. R.* depending, which the Tenant brought Assise of the same Land against the Infant in Court, and did recover by default against the Infant, and the Seisin and Disseisin found: And upon a plea in bar of the first Assise of the Recovery, the Infant by Replication set forth all the speciall matter. It was adjudged *per Curiam*, that he might falsifie the Recovery in the Action in the Common Pleas: For in all cases where a man shall not have Error nor Attaint, he shall falsifie; and in this case he could not have Error nor Attaint, because the Judgment was given in *C. B.* not by default, but upon Verdict; and it should be in vain to bring Attaint, for what he could give in no other evidence, then what was at the first trial.



## Falsifying of Recovery.

An Infant may well falsifie a Recovery had against himself by default, 3 H. 6. 10. but 26 Aff. 6. it is said that he shall not do this but during his Nonage. An Infant shall not be condemned by default, 12. Aff. 37. 2. 3. 47. An Infant shall falsifie a Recovery had in Dower against his Guardian, as to say, that the husband never had any thing in the Land: Or that it was by default. *Quare* if it were in an Action tried, 10 R. 2. Dower 185. see 3 E. 3. Infant 16. That a Verdict found against an Infant shall not bind him.

Affise against *A.* did remain for difficulty of the Verdict, the Plaintiff entered upon *A.* and he brought an Affise, and it seems well, and that the other had abated his Writ by Entry before Judgment, and so *A.* shall falsifie the Verdict, and the other put to his Affise Paramount, 21 E. 3. 23. Aff. 105. Note there, that *A.* brought the Affise before any Judgment given for the other.

The Plaintiff in a *Mortdancester* may well falsifie a Verdict pleaded against him in Affise, as to say, that the Seisin was by disseisin of him upon the Tenant who was in by discent, so the same defeated, and this is an Action of a higher nature, &c. 5 E. 3. *Mortdancester* 16. 5. Aff. 1. *Mortdancester* 21. the same Law without alledging the discent there, and 7 E. 3. 66. 21 E. 3. 23. 27 E. 3. 8. 10 E. 3. 40. 11 Aff. 17. where the Heire did recover in a *Mortdancester*, after that the Tenant had recovered against him in *Terminum qui preterit* by default.

But no Action upon his own Possession after such recovery by default, but a Writ of Right, *ibid.* and 7 E. 3. 62. And see there, that the wife who lost the same Land by default in Dower, could not maintain her *Cui in vita* of a Title Paramount, but was put to her Writ of Right, whether she were in before of right, or of wrong, but if the Recovery against her were by action tried, she should be restored to her ancient action, because the other Possessor was utterly defeated. See 10 E. 3. 40 *Esopped* 155. And note that the Statute of *West.* 2. cap. 3. Remedies onely, recovery against the husband by default of the wives Land: And helps him in the Reversion upon a Recovery against Tenant for life, or in Dower.

In Dower, the Tenant pleaded a Recovery against the Demandant in a *Scire facias* upon a Fine, where she had aid of him in the Reversion who joyned, and pleaded a Feoffment of the husband to him, and that found against him, upon which we recovered: The wife shewed that her husband was Heire to the Conuzee by Fine, so as if there were no such Feoffment, she ought to recover Dower, &c. for the Verdict did not disprove the Estate of her husband; and notwithstanding the Aid-prayer of the stranger, and notwithstanding the Recovery against her in Affise, it was holden that she should be restored to her Writ of Dower, without any protestation to be attendant, &c. 50 E. 3. 8. *Dower* 53. And there *lepton* saith, that if he who hath no Title by this way, taketh Issue upon the point of the Writ, and it is found against him, he is restored to his old action; but if he take Issue upon a collaterall matter, as a Release

And it is found against him, he shall not have any remedy but a Writ of Right: And therewith agrees 5 H. 7. 3. and 19 E. 3. *Estoppel* 127. And if he cannot have a Writ of Right, he shall have no remedy: As if a woman plead a false Release, and the same is found against her, she shall not have a *Cui in via*: But see the principall case agreed contrary to this reason, 50 E. 8. And he who hath lost in Affise, shall have of his possession before that possession upon which he lost, 32 Aff. 9. 33 E. 3. *Tabl.*

If in a *Precipe* against husband and wife, of the wives land, the husband doth confesse a Release, or other Deed pleaded against them, the same shall not bind the wife after his death, 34 Aff. 7. *Error* 81. 21 H. 6. 49.

If an Annuity or Rent-charge is demanded against husband and wife, or the issue in tail, and they confesse the Action, or the Deeds, the same shall not be preiudiciall to the wife, or the issue in tail.

Affise by an Infant, it was found that the wife of one A. did levy a Fine to the Ancestor of the Plaintiff, &c. and A. entred, so the Fine avoided, and made Title: After the Infant sued a *Scire facias* upon the same Fine, and pleaded a Divorce betwixt A. and the woman at the time, &c. and that she was married to the Ancestor of the Plaintiff, and he was removed to have his plea, because now an Infant notwithstanding the Verdict, for Attaint he could not have, because the Jury was not charged with the Divorce, the same not being alledged, and no default was in the Infant, 7 H. 4. 3. and 25. vi. 3 H. 6. 10. Where the Alienation of the Ancestor of the wife was found by Deed against the husband and wife after his death, she shall not be bound by it, but may say, that nothing passed by the Deed, because the Issue was not upon it: but the better reason was, because she was a Feme-covert, and no Lachesse was to be adjudged in her, 32 Aff. 9.

VIII. *Where the Wife shall falsifie a Recovery had against her Husband, and in what points.*

The wife shall falsifie a Recovery had against her husband in all points in the point tried, and might say, how he might have better pleaded, and she shall have Dower, if not, that the other can maintaine the Title of the Recovery: So upon a Recovery against him by default, 36 H. 5. *Plur.* 27. 47 E. 3. 13. 10 H. 6. 1.

If the husband vouch himself and loseeth, or might have pleaded in a Release, the wife shall falsifie the same. *Parkins* 74.

Wich. 144. That if the husband lose upon a plea dilatory to the Writ, as Non-tenure, mis-naming of the Town, yet the Wife in Dower shall compell the other to maintain the Title: And so it seems there the Recovery was upon default of his Vouchee, 50 E. 3. 9. So where he pleads Non-tenure, or Misnomer, 20 E. 2. *Dyer* 140.

In:



In an Assise by an Abbot against the husband, it was found that he was a Bastard, for which the Abbot entred as in his Escheat, and was seised, till by the husband's issue. And it was found that the Abbot had right, &c. Now the wife in Dower did alledge, that the remainder was to her husband for want of issue of A &c. and she could not have the plea, because it was contrary to the Verdict, and such matter is not helped, by *West. 2. cap. 4.* But she may well shew a Title before in her husband, as that he entred against his Feoffment, &c. and falsifie in a collaterall matter, 47 E. 3. 3. 26 E. 3. *Fauxifier* 45. *Perkins* 73, and 74.

*Perkins* conceives that if the husband doth traverse the points of the Writ in a *Mortdancer*, where he might have pleaded to the Action of the Writ, as that the Plaintiff is issue in tail, and he himself is in by descent, &c. and found against him, the wife shall falsifie, and yet the issue hath right, but not by this way: But it seems there that the wife shall not falsifie, if the issue might have entred, *fol. 74. and 75.* And so when the husband loseth in a Writ of Entry *ad Terminum qui preterit*, where the other ought to have a Writ of Entry upon a Disseisin had by the Father of the husband, *Perkins* 75.

In a Writ of Right against the husband and wife, where the husband hath aliened and disseised the Alienee, and the Wife joyned and found against them, *ut oportet* the heire of the wife shall not falsifie in a *Jointure in vita*, yet her Title is eigne to the Recovery, if she hath any remedy. 3 E. 3. 58. *Cui in vita* 24.

IX. Where Tenant for years, by Statute-Merchants, or by Elegit, shall falsifie a Recovery against him in the Reversion by Entry, or Plea, without Ejectione firmæ.

IN an *Ejectione firma*, the Defendant pleaded a Recovery against the Lessor, and the Title of the Plaintiff mean, the Plaintiff traversed the Title of the Recovery: But it was holden that he should not falsifie, for then the Statute of *Gloucester* should be in vaine, 30 H. 6. *Fauxifier* 9.

*Brian* saith, That a Termor shall falsifie a Recovery of the Land against his Lessor, in the same manner as he shall do of a Rent falsely recovered, *M. 1 H. 7. 9* but contrary to this is 7 H. 7. 11. and 13. If the Lessor be seised of the Reversion at the time, but the Termor shall falsifie in possession, as to say, that at the time of the Writ and Recovery against the Lessor, he had nothing in Reversion, but had granted the same to T. to whom we did attorn, 1 H. 7. 9. *Fauxifier* 23. But *Brian* thinks that he shall falsifie in an *Ejectione firma* at the Common Law, for that doth not defeat the Recovery, as well as Grantee of a Rent-charge shall do.

*Hussey*, A Termor shall not falsifie no more then he in the Remainder,

and is all one of a Termor, Tenant by Statute-Merchant, and by Ele-  
but he agreed to the Case of the Grantee of a Rent-charge, if he hath  
freehold, 7 H. 7. 11. *Fauxifier* 25. 7 H. 4. 13. agrees with *Hussey*, so 9 E.  
437. by *Danby*, but *Littleton* contrary.

*Turbert* saith, That the Grantee of the next avoidance shall falsifie  
a Recovery had against his Grantor after in a *Quare Impedit* at the Com-  
mon Law, 26 H. 8. 3. 21 H. 8. cap. 15. But a Termor of a Rectory shal never  
falsifie a Recovery had against the Parson in a *Quare Impedit*, although  
it be by Collusion, agreed 26 H. 8. 2. 43 *Aff.* 41. 27 H. 8. 7. 9 E. 4. 38. 1 H. 7.  
9. vi. 12 H. 8. vi. le stat. 21 H. 8. cap. 15.

*Willby* and *Hill* held, that a Termor should plead matter in discharge  
of the Freehold, if the charge do begin after the Term, 19 E. 3. *Fauxi-*  
*fer* 35.

An Affise against a Termor, and he in the Reversion, and they lose  
by false Oath, the Termor is acquitted of the Disseisin; he shall not  
have Attaint, because he hath but a Chattell: But if he in the Reversion  
brings an Affise against the Termor, and recovers by false Verdict, he  
shall have an Attaint, because he is affirmed Tenant, &c. but where the Ac-  
tion is brought against the Termor and him in the Reversion, and he in  
the Reversion doth confesse the Action, the Termor shall plead in bar.  
And therefore *quare* wherefore he shall not have Attaint. Also it cannot be  
a Recovery but upon default, or reddition of him in the Reversion: but  
no Receit for him in an Affise, but he is put to his Writ of Covenant.  
And Tenant by Statute-merchant named in Affise, shall not have Attaint,  
was acquitted of Disseisin, and could not have Affise because party to the  
Writ, and he cannot plead other plea then he in the Reversion; Tenant  
to the Affise pleaded. And *Kirton* saith, That a Termor named in an  
Affise, shall have a *Quare ejecit*, &c. And then wherefore should not Te-  
nant by Statute have an Affise. *Knevit* conceives that he shall have an  
Attaint, 43 *Aff.* 41. 44 E. 3. Attaint 22.

And note, that by the Statute of *Gloucester*, cap. 11. a Termor shall not  
falsifie but by receit before Judgment, and that by default, or reddition,  
and not for faint pleading, 7 H. 7. 11. But by the Statute of 21 H. 8. cap.  
15. he shall falsifie for his Term, although he come in after Judgment,  
and for faint pleading.

*Faulconer* saith, If in Affise against a Termor and him in the Rever-  
sion, he in the Reversion plead in bar, the Termor shall plead no bar:  
but if he in the Reversion do not plead in bar, the Termor shall plead in  
bar which matters which extinguish the right of the Plaintiff, as a Re-  
lease, &c. Also upon Aid-prayer, the Termor shall be received to plead;  
and in an Avowry he shall plead, that nothing is arrear after the Lease,  
and every matter which dischargeth the land; but he shall not plead to a  
Deed alledged before the Lease, &c. 45 E. 3. 7, and 8. 43 *Aff.* 41. If a Ter-  
mor plead in bar in a *Præcipe* against him, he shall forfeit his Estate, 8 E.  
4. 19. So if he bring Error, 16 *Aff.* 26.



## Falsifying of Recovery.

In a Common Recovery the Vouchee doth depart in despite of Court, and the Termor shall be received as well upon the default of the Vouchee, as upon the default of the Tenant, by the Statute of *Gloucester*, cap. 11. yet the Statute speaks onely of the Tenant, but the Recovery shall stand as to the Freehold, and the Recoverer shall have an Assise being put out.

Tenant by Statute-merchant Staple, and by *Elegit* shall falsifie a Recovery had against him in the Reversion, by equity of the Statute of *Gloucester*, 9 E. 4. 66. 7 H. 7. 11. But a Guardian shall not falsifie by it, by *Hall and Thirne*, 7 H. 4. 13.

The Statute of *Gloucester* speaks where he may have Action of Covenant, yet he shall falsifie although he hath not a Deed, and the Covenant is not traversable, 9 E. 4. 37.

*X. Where he in the Reversion or Remainder shall falsifie a Recovery against Tenant for life in a Scire facias, and where by Entry, and to what point.*

**H**ee in the Reversion shall not falsifie a Recovery against Tenant for life in a *Scire facias* against himself, 15 E. 3. *Fauxifier* 13. *Aide* 9. 8 E. 4. 28.

He in the Reversion could not falsifie a Recovery had against the particular Tenant by faint pleading, before the Statute of 9 R. 2. cap. 3. 9 E. 4. 36. 7 H. 7. 11. 14 H. 8. 4. but now by the Statute of 32 H. 8. cap. 31. every Recovery had against Tenant in tail, after possibility of issue extinct, or otherwise for life by assent and Covin of the same Tenant, is utterly void against him in the reversion.

The Statute 32 H. 8. cap. 31. is repealed by the Statute of 14 Eliz. cap. 8. which makes recoveries had by Collusion against Tenant for life to be void.

Trespasse by a Villein against Lessee for life, and he is found frank, he in the reversion shall falsifie it, and by consequence in a *liberate probando*, see 45 E. 3. 1. *Aide* 116. *Keble* saith, Where the same thing is demanded against Lessee whereof the reversion is extinct, shall bind him in the reversion, as a Villein found frank in *Nativo habendo*. Or if it be found against the Lessee in a *Quo-jure* at Common; but although that in trespasse it be found against the Lessee, he in the reversion shall falsifie, because he shall not have Attaint, and shall not be prayed in aide, nor be received.

*Kinsmill* contrary, and that a Verdict is as strong for the one as for the other: And he affirmed that he in the reversion shall not have an Attaint where it is found against the Lessee in a personall Action; but if the Lessee loseth by confession, if it be in an Action reall or personall, he in the

the reversion shall falsifie it, as the issue in tail shall do, 14 H. 7. 6. And where a Verdict is as strong in an Action personall as reall, 7 H. 6. 9. 9 H. 6. 64 where he who had an Estate after, was estopped, and 13 E. 4. 3. where he in the reversion, and the issue in tail are estopped by such Verdicts, and they had Attaints of all things, but of damages, of which the Executors shall have the Attaint, 13 E. 4. *Fauxifier* 22.

At the Common Law, he in the reversion shall falsifie a recovery had against Lessee by confession, default, &c. if he have not joyned in aide with him, and the falsifying shall be in the right, and in a *Terminus qui preterit*, he shall falsifie if he hath not joyned, by *West. 2. cap. 3*. And said, that he in the reversion shall never falsifie if he never had possession. But in a point tried, or matter of record, he in the reversion or remainder shall not falsifie by the Statute of 9 R. 2. *cap. 3*. for that gives him Error, or Attaint, 4 H. 7. 2. *Fauxifier* 24. so that the Statute giveth restitution, and damages to the Lessee, if he was not in Covin with the Recoverer.

If a rent be recovered against the Lessor of the land, he in the reversion shall falsifie in possession. for he cannot have an Action, and it is not the thing leased: so of the issue in tail, 4 H. 7. *Fauxifier* 24. 7 H. 7. 11. 9 E. 3. 38.

The Tenant shall not falsifie a recovery of the rent against his Lord, nor *contra*, 36 H. 6. 26. 6 H. 7. 14. but 36 H. 6. 12. it is holden contrary.

Hassell saith, That he in the remainder shall never falsifie a recovery, because the whole fee is recovered, and so no foundation of Action for him. But Wood saith, That he may falsifie in a *Formedon* in the remainder, 7 H. 7. 11. *Fauxifier* 25. 5 E. 3. 43.

And the like 12 E. 4. 21. that he shall falsifie in a *Scire facias* against him where the recovery was not executed against the particular Tenant: So in an *Affise*; and there it is spoken of the Statute which helps him in the remainder.

If a *Prescipe* be brought against one who hath nothing, but purchaseth for life, hanging the Writ, the same is no cause for him in the reversion to falsifie, no more then for the Tenant himself, 48 E. 3. 14. *Fauxifier* 33.

The Heire in a *Scire facias* for Dower shall recover against his Guardian for his default within age, and may well plead, that the husband was never seised, that she could have Dower, 10 R. 2. *Dower* 185.

A recovery against Lessee for life by answering to the Action which doth suppose the reversion to the recoveror, the Lessor shall enter for a *forfeiture*, and shall falsifie the recovery in *Affise*, 5 E. 3. *Entry Congeable*, 42. 3. 43. 3.

*Affise* against Conuzor and Conuzee for life by Fine, and the Disseisin found, the Plaintiff enters: Now he in the remainder by the Fine sued a *Scire facias*, being Heire to the Conuzee for life, who pleaded the Disseisin found, and that he did not disseise before the Fine, and it was a good plea, because it is not directly contrary to the Verdict. Also it was said,



*Falsifying of Recovery.*

said, that he shall not be estopped of any plea, by that, that he is *heir, &c.* because he claimes the remainder not by him: And agreed there, that he in the Reversion should falsifie in the point tried, because he could not have an Attaint, 10 E. 3. 13. *estoppel* 154.

If a recovery be had against Lessee for life, who recovers in value against his Vouchee, he in the reversion is without remedy at the Common Law, because he also shall have the Land in value, but if the Demandant counterplead the Voucher, and it is found for him, he in the reversion shall falsifie in a Writ of Right, because the Vouchee hath not entred into the Warranty: But if he enter into the Warranty and loseth by default, he in the Reversion shall be bound for the reason before, as a Release to the Tenant for life shall enure to him, 5 E. 4. 2. and 3. But note, if this Voucher be to be for a Warranty made to the Tenant for life, he shall not recover but for life, if not that the Vouchee loseth the advantage by generall entry into the Warranty, 38 E. 3. 11. for if so, he shall recover Fee for both.

But against him in the reversion, he shall never recover in value, but for life, by *Green*, 16 E. 3. *Voucher* 87. He in the remainder shall alwaies have the Land recovered in value by the particular Tenant. Not so of the Grantee of the reversion, because by two severall Deeds, 23 E. 3. recovery in value 11. but 12 E. 4. 20. It is holden no difference whether he vouch the Lessor, or a stranger, but that he in the reversion, or remainder shall have also the Land, &c. but alwaies it behoves that the Lessee be in of the same Estate leased at the time, &c. otherwise he in the reversion shall not have advantage of the recovery in value, because not privie in Estate, and therefore shall not be bound by it: The same Law is of the issue in tail, 12 E. 4. 20. Also he in the reversion may well falsifie, for that, that the Lessee had not any thing at the time, for that doth prove the recovery void, 12 E. 4. 15.

F E OFF.

# FEOFFMENTS AND FAITS.

## 1. Where a Deed may have two Deliveries, where not.

**N**ote, the second delivery of a Deed is void, where the first took any effect; As the Deed of an Infant, or of a man imprisoned, &c. But *Martin* saith, That if I release all my right to *J. S.* in the Mannor of *D.* where none of us have any thing in the Mannor, and I re-deliver it to have being seised then of the Mannor, this is good, because the first delivery was utterly void, 1 *H. 6. 4. Feoff. and Faits*, 1 *H. 7. 14. vi. 11 H. 7. 16. 33 H. 8. Dy. 51, 1 Eliz. Dy. 167. Tames case*, 8 *H. 15. 13 Eliz. Dyer 192. ac.*

If the Patron makes a Confirmation of an Annuity granted by the Parson, and deliver the Deed, before the Parson deliver the Deed of Grant, and after the Deed of Grant is delivered by the Parson, and the Grantee deliver back the Patron his Deed of Confirmation, who re-delivereth it, &c. this is good, because it took not any effect by the first delivery, 8 *H. 6. 6.*

A man makes an Obligation to *B.* and delivers the same to *C.* to keep until certain Conditions between *B.* and him are performed, sealed, and delivered to the Plaintiff: Now this delivery is altogether void, because it is not expressed, that after the Indenture sealed and delivered to him, that he shall deliver the Obligation to *B.* &c. 19 *H. 6. 37. Replender 9.*

**11. Where**



II. Where a Deed shall be good, made by another in my name, and by my commandment.

**A** Man commands a stranger to make such a Deed, and the party himself seals and delivers it to him who writ it, to keep untill, &c. the same is no Deed without another delivery. 9 H. 6. 37.

Note, if I command one to make a Deed in my name, and deliver it in my name, this is my Deed, be *Babbington* and *Martin* clearly, 3 H. 6. Feoff. 2. If I deliver a Deed to S. to deliver over to D. who doth it, the same is as good as if I my self had delivered it to D. 27 H. 6. 7. Feoff. 13.

An Abbot shall be bound by a Deed which his Monk made by his commandment, *Perkins* 1.

III. Where a Deed delivered upon Condition to deliver over, shall be good by the first delivery without the other, and where he may disagree to that Delivery.

**I**F I deliver a Deed to one to deliver to I. S. when he comes to E. it is my Deed presently, and good although it be delivered before he cometh to E. and if I dye, and after he delivereth the Deed at E. the same is my Deed, which is not, if it were not my Deed at the beginning, 8 H. 6. 26. Feoff. 4. vi. C. 9. part *Throughgoods* case, ac. 9 H. 6. 37. 54 E. 4. 12 H. 8. Rot. 751. 11 H. 7. 16. 19 H. 8. 4. ac. 35. Aff. 6. ac.

Note, the *Quare*, 29 H. Dyer 34. Whether an Obligation may be delivered to the Obligee as an Escrowle, is resolved, C. 9. part 137. in *Throughgoods* case, that it is the parties Deed presenly.

In *Affise* the Tenant pleaded a release of the Plaintiff, who denied it, and it was found that it was delivered in *Dwell Maines*, upon a certain Covenant, &c. and afterwards delivered to the Tenant, the Covenant not performed against the Will of the Plaintiff, &c. And the opinion of the Court was, that the Plaintiff should be barred, 16 Aff. 18. Feoffments 83.

And therewith agrees 9 H. 6. 37. per *Curiam*, That if a Deed be delivered into the hand of another to be delivered over upon certain Conditions to be performed, and he, &c. gets the Deed, the Conditions not performed, yet this is a good Deed: And if in an Action upon it the Obligor doth alledge all the speciall matter, and concludes, so not his Deed, the Court *ex officio* shall give Judgment for the Plaintiff, because the Deed is confessed, &c. But if a man make an Obligation, and commands another for to keep it untill, &c. and doth not say, that then he shall deliver it over: And the party gets the Deed, and brings an Action upon it, the Obligor may alledge the speciall matter and conclude, so not his Deed,

deed because there was no delivery of the Deed in fact, nor confessed in law by such pleading &c. 9 H.6. 37. *Replead 9.* But it is holden, 8 H.6. 27. by *Babbington* and *Cotesmore*, that a deed delivered in the hands of another, as to be delivered over upon conditions to be performed, is not my Deed by delivery of the Bailiff, before the Conditions are performed.

But 10 H.6. 26. A difference is taken where it is delivered to the Bailiff, as an Escrole to be delivered as my Deed upon the Conditions performed, and where it is delivered as my Deed at first so to deliver over upon the conditions performed, for in the last Case it is my deed presently, in the first not untill the conditions performed; for the conditions are precedent, for it was never my Deed, and with this difference agrees, 27 H.6. 7. *Feoffments* 13. 19 H.8. 3. But it is there said that delivery to the party himself, as an escrole is nothing worth.

A man pleaded in Bar of an accompt, that if he acknowledge a Statute to the Plaintiff at C.&c. and said that he came thither at the day, and acknowledged the Statute, and because the Plaintiff was not there, he delivered the same to the Clerk to deliver to the Plaintiff &c. but because the Defendant took it back again from the Clerk before he delivered it to the Plaintiff himself, he was adjudged to accompt, 20 E. 3. *Accompt* 79.

IV. Where a Deed indented is not worth any thing, because the words of the one are in the first person, and the word of the other in the third, and where it is good, all the words being in the first person, and spoken by one.

The deed of an Abbot was *Noverint &c. nos concessimus W. H. unum* *fratrum &c. & pro hac concessione, idem W. renunciavit totam communiam, quam habere consuevit, cum diversis averiis &c. uni parti penes nos* &c. and the deed was indented, and it was holden as no deed, because the Abbot spake in the first person, and for *W.* it is spoken in the third. 9 H.6. 35. *Feoffments* 5.

If a man make a Feoffment reserving Rent by Deed Poll, this is good by *Andham* and *Littleton*, but *Danby* denies it, if it hath not the words, In witness whereof the Feoffee *sigillum suum apposuit*, for otherwise all is the Deed of the Feoffor, which hath no Reversion, so the Rent reserved ought to be by grant of the Feoffee &c. 8 E. 48. *Feoffments* 42. vide 5 H.6. 33. by *Danby*, *estoppel* 88.

Note by *Schard*, that a deed which is indented and Sealed is the deed of both, although one doth not speak any thing therein in the first, nor in the third person, but that all the words are the words of the other, because it is indented and sealed by both, 9 E. 3. 18. *Affise* 155.

A deed indented, is also a strong estoppel, when but one party speaks all, &c. and there is no grant nor Covenant of the other party, no if it



it had been covenanted of every part, *vide* 35 H.6.18. *estoppel* 87. when the Indenture of the Predecessour was pleaded against an Abbot, but the other party shall not be bound by such Indenture, although it hath expresse words in the end, because the one part remained with the party who speaks the words &c. and he hath put his Seal &c. 35 H.6.33. *Estoppel* 88. and see that this is contrary to *Schard*, 9 E.3.18. but 4 E.2. *Objection* 16. That if he who is bound in the deed put in such clause, *Quia in maiorem rei securitatem, inveni fideiussores, quorum unusquisque in tota, et in solido se obligavit*, although that none speaketh but the principall, yet if they set to their seals, this is an acceptance of the words of the principall, and they themselves are principalls, by *Spig Justice*, *quod nota* &c. and this is agreeing with *Schard*.

V. Where a Deed shall be void for the incertainty of it.

A Deed was, *Nos concessimus B. &c. & idem B. pro hac concessione renunciavit communiam &c.* and the Deed holden void against B. because it did not expresse to whom he had renounced the Common, yet it was a deed indented and sealed also by B. 9 H.6.35.

A man gave Lands to B. and C. & *heredibus*, leaving out the word (*suu*) with warranty to them and their heirs, and although the warranty did expresse the meaning of the party, yet for the incertainty of the words of the grant, it was adjudged, that they had but an estate for life, 19 H.6.73. 20 H.6.35. *Feoffments* 8.22 H.6.15. *acc.*

VI. Where and by what Pleas a stranger or privy shall avoid a Deed.

Strange saith, that a stranger shall not say, Not the Deed of him &c. No more shall he say, that nothing passed by the Deed by him, wherefore against a Deed of Feoffment of a stranger alledged by the Defendant in Trespasse, the Plaintiff said, that he did not enfeof, or that nothing passed &c. by the Deed, 10 H.6.7. *Feoffments* 6. and thereunto agreed *Fortescue* and his companions, and so was it adjudged, 28 H.6.6. *Feoffments* 14.

A Writ of Entry, the Defendant did maintain his Entry for not payment of Rent, the Plaintiff shewed an acquittance of it, and that the Defendant was a stranger, for which he said, he did not receive the sum by the Deed &c. and admitted a good issue 2 E.4.1. *Feoffments* 20. 12 E.4.4. 20 E.4.1. 12 H.6.2. 3 H.6.27. 10 H.6.7.

In Affise the Tenant pleaded the Lease and Release of a stranger to his Father, and gave colour by a Feoffment of the Heir of the stranger, to the

plaintiff, after &c. The Plaintiff said, that the stranger did not release by the Deed, 38 E.3.11. *Feoffments* 46.

Formedon in the Remainder, shewing the Deed of the Tenant, a stranger could not plead that he did not give by the Deed, for such plea doth admit him Responsible, and the Deed is not to another intent, by which he ought to answer to the gift, but *Schard* said, If you had said, that nothing passed by the Deed, perhaps it might have been received, 10 E.3.1. *Feoffments* 76.

*Ad Terminum qui prateriit*, the Plaintiff counted upon a Lease of his ancestor to a stranger &c. the Tenant shewed a Deed, by which the ancestor did enfeof the same stranger in Fee, the plaintiff said that nothing passed &c. and *Schard* thinks it a good plea, because when it is used as a Deed of Feoffment per this Plea, it is avoided to all intents, for the Deed is to no purpose, without Livery and Seisin, a sa Deed of a Fee, and Livery is made in Tail, he shall have but Tail by *Schard*, who said, that so it was adjudged, also he said, that if I make an Indenture of Fee, and ten years after I lease him for ten years without Deed, he hath not estate but for the Term. *Parn* and *Trew*, Serjeants, denied that, and said, that it was his folly to suffer the continuance of possession, for that shall be intended upon the deed, and in the end it is said, that this is against the course of the Law before used, for to suffer the averment, 12 E.3. *Estoppel* 176. 15 E.3. *Estoppel* 23 b. 2 E.3.24. 10 E.3. 41.

Intrusion upon a Lease of his father, to a stranger for life, the Tenant shewed a Deed, by which the father gave the Land to the same stranger in Fee, the Plaintiff said, that nothing passed, and no Plea by *Hill* and *Wilby* in that Writ, nor in *Entrie ad Terminum qui prateriit*, but good in *Entrie* grounded upon a Disseisin, for that is the ancient course of the Law by them, and they said, that upon such Deed he shall have Fee, although the Liverie without Deed made after was but for life, 19 E.3. *Estoppel* 184. and according to that of *Entrie ad Terrminum qui prateriit* &c. 18 E.3. 16. where it is holden, that upon such a Deed shewed, and continuance of possession confessed after the making it shall be intended upon the same Deed, *Estoppel* 220. But see that 19 E.3. is printed, that *Hill* said, that in *Entrie ad Terminum qui prateriit*, that he is contrary to the reason there, and to his own opinion 18 E.3.16.

See 32 E.3. *estoppel* 247. where privy to a Deed (s) the heir said, that nothing passed by the Deed, notwithstanding that the contrary thereof was found by Verdict in an Affise by the same party against him.

Nothing passed by the Deed is no Plea, when the thing might well passe without Deed, as in Affise the Tenant saith, that the Land was given to the Father of the Plaintiff for life, the remainder to him &c. that nothing passed was held no Plea for the Plaintiff, 9 H.4.3. *Corodie* 42.

Note where the Deed is made in Seisin of the party, that nothing passed &c. shall be no Plea, for then it shall be well used as a confirmation, 3 E.3. 14. *Estoppel* 131. 44 Aff.3. *Affise* 355.



VII Where a man sha'l take advantage by enrolement, and where the King &c. and where the enrolement shall serve for the Deed, and where a Deed shall be enrolled, where not.

**N**Ote by the Court, if a man release to the King by Deed enrolled, the King shall not plead this Deed, if he do not shew it under the Seal of him who made it, for if the Deed be lost, the enrolment shall serve for nothing, and so it is of a common person, 19 H.6.6. Feoffments 7.

In a Formedon, the deed of the Ancestor of the demandant with warranty was pleaded &c. and the same being delivered to the demandant, the Seal was broken off by a stranger, and upon confession of the same both the parties were imprisoned, and the deed enrolled *verbatim*, so as the enrolment did serve in the place of the Charter, 43 E.3. Ilin. North. imprisonment 23.

Sadler said, If a Charter be enrolled here, If I bring against him who made it warranty of Charters, he shall be driven to answer, without shewing of his deed, because it is enrolled here of Record, which He utterly denied, H.7.E.3.7.

A man shall not deny a deed which is enrolled, by *Babbington* and *74. ston*, but he may well avoid it, as to say, that nothing passed, or that he had not any thing in the Land at the time of the Release &c. 9 H.6.60. vide 16 H.7.5. acc. See 7 E.4.5. That he shall not avoid it by *Durese*, nor by Nonage.

The Court would not suffer a deed of Feoffment to be enrolled, because it appeared upon examination that no Livery and Seisin was made, 44 E.3.7. Feoffments 52.

*Littleton* did examine him who came to enroll an Obligation, if he would have it enrolled &c. and of his age, and he said, that he should not avoid it afterwards by *Durese* or Nonage, nor deny it, and it was said, that the deed of the husband and wife during the Coverture shall not be enrolled, because it is not the deed of the wife, 7 E.4.5. *estoppel* 68. and to this last Case agrees 5 E.4.7.

VIII. Where a man shall say, that the Deed was made at another place then it beareth date.

**H**E who pleads a Deed bearing date at D. shall not say, that it was made and delivered at S. but he may say, it was first delivered at another day &c. 22 H.6.12. Feoffments 10. and he may not vary from the place 33 H.6. Feoffments 43. and 31 H.6. Feoffments 104.

Be with speciall matter he may vary from the place written in the deed, as to alledge that it was made by *Duresse* at *D.* or in another County, 9 E. 3. 9. 31 H. 6. *Feoffments* 104. 22 E. 3. 15. 1 H. 6. 3.

*Cheney* held no difference of the day and place, but that he might vary in both Cases, 4 H. 6. 14.

IX. *Where a Deed pleaded shall remain in Court, and where it shall be delivered to the party.*

**N**Ote, that when a deed is denied, the same shall remain in Court, because it ought to be tried, and shall be delivered to the Jury to see the manner of making of it, but when it is confessed it shall be delivered to the party, 38 H. 6. 13. *Feoffments* 19.

*Affise* adjourned into the Common Pleas, upon a forreign Release pleaded and denied, and the *Affise* awarded at large upon default, and the Attorney of the Tenant prayed the delivery back of the Release, and he could not have it, for the Record must be sent back whole &c. but he shall have the same delivered back to him by the Justices of *Affise*, H. 14 E. 3. *Feoffments* 66.

*Needham* saith, if an Obligation denied, be found for the Plaintiff, it shall be delivered back to him, and if against him, it shall remain in Court until the plaintiff hath reversed the Judgement, 9 E. 4. 54. vide 7. H. 4 39. and in the first case it shall be cancelled.

X. *Where a man shall say that the Deed was made at another day, then it bears date, and after the date, although he do not alledge that at the first, or before the date of it.*

**D**Ebt by a woman, the Defendant pleaded the Release of *T.* her husband, she said, that *T.* was not her husband at the time of the making &c. and the enquest taken from the time of the making, and not from the date, yet she took no Protestation of the date &c. 15 E. 3. *Feoffments* 63.

The Conusor pleaded the defeasance of a Recognisance, which bore date before the Recognisance with averment, that it was made and delivered after the Recognisance, and Judgment given against him for the elder date; but it was afterwards reversed by Error, 29 Aff. 47. *Feoffments* 87. vide 18 H. 6. 8. Vide *C. 5 part Claytons Case*. 11 Eliz. Dier 307. a deed takes effect from the delivery, 12 H. 6. 1. acc.



In a *Cui in vita*, the Defendant pleaded a Release of the Demandant, she was received to averr that she was within age at the time of the making, although shee was examined, and accepted of full age upon the fine levied after the date, H. 3. E. 2. *Feoffments* 95.

But see 12 H. 6. 1. Where a man could not averr the Deed to be made before the date, *Release* 7. but well that it was made after, and with that agrees M. 12 Ed 3 *Affise* 116. hee who takes such plea, hee against whom the Deed is pleaded, or he who useth the Deed, 12 *Aff.* 37.

A man shall well say, he was within age at the day of the making, although he was of full age at the day of the date, but then he ought to take the date by protestation, for otherwise the deed shall be intended to be made the day of the date, by *Herle*, 8 E. 3. 3. 46 E. 3. 33. *estoppel* 206.

Vi. 12 H. 6. 2. *Br. estoppel* 46. acc. In a *Quare impedit*, a man was not admitted to averr that he was within age at the time of the making of a Deed, when as it appeared by plea, that he had sued Livery of full age before the date of the Deed.

Executors sue Execution of a recognizance made to the Testator, and because the Probate was of elder date, then the Will it self, it was awarded that the Defendant should be discharged, 18 E. 2. *Feoffments* 120. See 12 H. 6. 2. where Executors cannot plead a release to the Testator which was dated after his death, &c.

Debt against a Master of a house upon an Obligation of the Predecessor, the Defendant may aver, that he was not Master at the time of the making of the Deed, &c. 26 E. 3. 3. *Debt* 165.

A man may well plead against his Deed of release, that he had no any thing at the time of the making of it, without answering to the date, if he hath not estopped himself by the manner of his pleading, 46 E. 3. 12. *estoppel* 202.

9 H. 6. 9. 20. E. 4. 10. 49 E. 3. 14. ac. *Br. estoppel* 43.

If the Tenant vouch, and shew a deed of the binding which bears date after the Voucher, yet that is nothing to the Demandant, but *Firberbert* thinks that the Vouchee may well discharge himself thereof, 38 E. 3. 28. *Voucher* 57.

A Release made the second day of May, is no bar of an Obligation dated the first, but first delivered the fourth day, (which was granted) but if the Plaintiff declare generally upon an Obligation dated the first, and doth not alledge the first delivery the fourth, he shall be barred by the release, and he shall not have liberty after to aver the delivery, by *Kavisor*, 5 H. 7. 26. *Bar* 147. See there, that every deed shall be intended to be made the day of the date, but that intendment need not be averred.

XI. Where a Deed shall be sayd the Deed of the Abbot alone, and where the Deed of the Abbot and Covent.

If an Abbot or Prior seal a Deed with the Covent seale, yet it is the Deed of the Abbot or Prior alone, and not the Deed of the Covent, although it hath such words, *In cuius rei Testimonium*, wee have set our common Seal, 37 H.6. Feoffment 17. Perkins 27.

Note, A Deed of the Abbot and Covent is good with these words, *In witness whereof we have put our seal*, leaving out, (*Common*) for it shall be intended their common Seal, M. 10 Edw. 4. Feoffments 27. 11 Edw.

Also they may well make a Deed out of their house, for it is sufficient if they meet together &c. but if it be dated in the *Chapter house*, the same cannot be but in their Chapter. But if it be dated at *London*, it is good, although the Chapter house be elsewhere. Also a Deed which is made by them in their house may be delivered elsewhere by a stranger, by a Letter of Attorney, not by their commandement only, 9 E.4. 39. 14 H.6. 16.

If an Abbot maketh an Obligation &c. and in the end of it saith, *In witness whereof &c. Sigillum Conventus apposui*, yet the Covent is not bound thereby, but if he say with the assent of the Covent, &c. *Apposui*, &c. the same is good: And note the Deed of the Covent shall be a good Issue in an Action against the Successor, 14 H.6. 16. Debt 35.

If the Abbot & Covent seale a Deed with the seale of a stranger, yet this is good, & shall bind the Successor with the words, *Sigillum nostrum* &c. 22 E.3. Abbot 21. Perkins 27.

XII. Where an Abbot, a Covent, Mayor, and Commonalty may do things without Deed, where not, and so of other bodies corporate.

Note, Choke saith, That the Deed of an Abbot and Covent may well be delivered by a stranger, by force of their Letter of Attorney, but not by their commandement, which *Genny* agreed, 9 E.4. 39.

Now, one may justifie in Trespass a servant to the Mayor and Commonalty for small things, &c. without Deed, shewing their Commandement, so as hee shew a Deed of his Retainer; but he cannot do a thing which shall vest or devest a freehold; without shewing a Deed of their Commandement, 7 H.7. 16. Monstrans 115.

Note, by *Pigot and Brian*, that a Lease or Feoffment made by the Mayor alone is void, so of a Dean, and if it be by Mayor and Commonalty, it.



it behooveth to have a Deed, otherwise it is void, by *Brian*, and a Lease made to the Mayor and Commonalty, for the term of their lives, is not determinable, by *Pigot*, and *Brian* in a manner confirmed it, 22 *Edw. 4. Feoffments* 29.

Note, the Assignment of Auditors done by a Commonalty is good without deed, and so is justification by their commandement, and also by the Commandement of the Covent in time of vacation, to sell their Wood, and to do their necessities for them, *T. 12 E. 4. 10.*

Note *Townsend* saith, That a Body corporate may well grant an office or such like things which do belong to service without Deed, for they may have a Plough-man, Cook, Butler, and the like without Deed. And it is a common course, to justify by the commandement of a body corporate, without shewing any thing thereof: *Bryan*, a body corporate cannot do any thing of themselves: *Vavisor*, in the time of *Edward the fourth*, *Pigot* alledged, that a body &c. assigned Auditors, and it was not allowed *Per Curiam*, without shewing a Deed. *Townsend*, Assignment of Auditors, is a thing which belongs to the Justices, and *Brian* saith, That if one occupy as Bayly to a body Corporate, he shall be charged to account, although he be not Bayly by Deed, 4 *H. 7. 17 Feoffments* 32.

Note, It was sayd, a man may justify the doing of things, which is for the profit or service of the Dean and Chapter by their bare commandement, but it was in a manner agreed, that he should not maintain Debt against them for his travaile in the business, 13 *H. 7. 17.*

### XIII. Where a Deed or Seal shalbe for many, and shalbe their Deed.

**I**F twenty say in a Deed, *Sigilla nostra apposuiamus*, and there is but one Seal put to it, yet it is a good Deed against the others, 8 *H. 4. 4. 11 H. 6. 4.* by *Portington*.

Note, where foure lease by a Deed, sealed with two seals, this is a good Lease of them all with averment, &c. In waite, declaring that the foure leased, and maintained with speciall matter in the Replication, 9 *H. 4. Feoffments* 39. vi. 39 *E. 3. 41.*

If foure or five make a deed which hath but one seal, yet the Deed is good against them all, being sealed by them all with one Seal, in one place, 27 *H. 6. Feoffments* 105.

A man leased to two by Indenture, and there are diverse Covenants on both parts, and the Lessees bound by the same Indenture to pay &c. and one only set his Seal to the Indenture, yet debt brought against him alone by the Lessor, did abate, because the other were not named, who did not set their seals to the Deed, &c. 39 *E. 3. 9.* yet the Duty did accrue upon

upon a Condition in the Indenture, which did not belong to the E-  
state.

XIV. Where a Deed is good although the one party or the other, or the thing which passeth be misnamed in the sir-name or proper name, or where the proper name is changed, where without any name, &c.

Note. Hanke delivers it expressly for Law, If Land be given to *J. S.* and *B.* his wife in speciall tail, &c. where her name is *A.* yet is a good gift in the whole, and the land shall pass by the Deed and Livery without question. And if Land be given to *J. S. & uxoris sue*, this is good without naming the wife by name, 1 H. 4. 5. 1 Affise 11. agreeth, if the wife had taken the advantage, especially there, for the reason of *Scrope* there given. Vi. 3. Aff 4. and with this last case *Green* agrees, M. 30. E. 3. 18 But he who claimes by such a Deed, ought to give the wife her proper name, the case there was, That Land was given to *T.* and *M.* his wife in speciall taile, the remainder to *J.* son of *P.* on the body of the daughter of *J. Candy*, begotten in fee, and his heir brought a Formedon in the remainder, as heir of *J.* son of *P.* of the body of *I.* the daughter of *I. Candy*, begotten, and the Writ was awarded good, notwithstanding the variance, because he could not have another Writ: Also a gift to the daughter of *J. S.* not named, is good, with Livery and seisin given to the daughter, Feoffment 164.

Annuity against an Abbot upon the grant of his Predecessor, and declared that *O. de S.* Predecessor, granted and shewed a deed which had no proper name of the Abbot, yet it was holden good, 20 Edw. 3. Annuity 1733.

In Debt by *J. Bosome* upon an obligation, the Defendant pleaded his Acquittance which was written *Bozome*, and yet well, notwithstanding it was alledged, that he by the name of *J. Bosome*, &c. 14 H. 4. 13. Feoffment 44, see 22 H. 6. 48 Bar 32: where the Defendant in debt pleaded so, but that was only to take away ambiguities, for he needed not have done so, by *Paston*, vi acc. 9 Edw. 4. 43. Grants 23. That a grant or an Obligation made to *W. S.* is good, although his name was *W. G.* with setting forth the speciall matter. But otherwise it is, if the deed be by a false proper name, by *Danby*, and *Jenney*, yet *Littleton*, said, That *W. G.* shall have a Formedon in the Remainder, upon the Remainder given to him by the name of *J. G.* because he is the same person, *Quere*.

Vi. 4. H. 7. 15. 3 H. 6. 2. ac. Vi. C. 4 part in *Ayres* case, If the person be so described, that hee may be certainly known, the mis naming of him is not materiall.

Debt against an Abbot upon an Obligation made by him by the name of



## Feoffments and Fails.

of *I. B. of C. Clark*, he ought to declare, *Quod cum predict. Abba per nomen I. B. de C. Clericus concessit se teneri, &c. 4 E. 4. 26.*

If an Action be brought against me by a contrary Sirname, addition, or name of Corporation, and a stranger doth maintain against me, I shall have an Action of Maintenance against him by my very name, and shall declare of Maintenance in an Action against me, *per nomen, &c.* And *Danby* said, So if I be misnamed in my proper name of Baptisme, *M. 10 E. 4. 19.*

Annuity against the Prior of *St John*, declaring that his Predecessor by the name of the Prior of the Hospitall of *St John* did grant, and the opinion was that the Writ should abate, for the variance from the specialty upon which it is grounded, although he declared specially, and the Writ is also according to the Corporation, for the Grant was by the Prior and Covent. so the Successor estopped, but he shall take it by protection, and so saves his name of Corporation, *T. 11 H. 6. 51. variance, 9. vi. 11 E. 3. 2. variance 26. ac.*

In an Assise against *Julian*, she said, that the Ancestor of the Plaintiff did enfeoff her by the name of *Gillian*, by this Deed, &c. And the opinion was against the Tenant, because it cannot be one name upon the Deed shewed, *29 Ass. 16.* but *Fitz.* reads it, that the Ancestor of the Plaintiff did enfeoff her by the name of *Julian*, by this Deed, and the Deed was *Gillian*; *Feoffments 86.*

If a man make a Feoffment of ten acres by the name of a Mannor, it is a good Feoffment by reason of the Livery *per Curiam, 22 H. 6. 39. Feoffments 9. and 27 H. 6. 2. Feoffments 12. vi. 16 E. 2. Gar. of Charters 31.*

Also if a man purchase according to his name of Baptisme, and after that is changed by the Bishop when he is confirmed, yet it is a good purchase, *12 R. 2. Feoffments 58.* And a Recovery had against him before such confirmation shall stand after his name is so changed, *9 E. 3. 14. Feoffments 74.*

An Abbot grants Common by the name of *Rich.* where his name is *John*, his Successor shall not avoid this Grant, *27 E. 3. 9. Grants 67. Perkins* saith, That here the name is not material, *fol. 98.* See more of this in the Title of *Grants.*

Note, that Land shall not passe by the Deed of Grant of a house, with Livery in the house, because the Land is not parcell of the house: But an Acre shall passe by the name of a Carue, and a Carue by the name of a Mannor, *27 H. 6. 2. Feoffments 12. 5 H. 7. ac.*

If the Deed of Feoffment be of two acres, and the Livery in foure acres, all shall pass by the Deed, by *Danby*; As if the Deed is of a Mannor, or house, and the Livery is in twenty acres, they shall passe by the Deed, which *Choke* granted, if they be known by such name, or otherwise by the Livery, *M. 7. E. 4. Feoffments 23. vi. 7 E. 4. 24. Confirmation 4.*

In an Assise against *I. S.* he pleaded a Feoffment made to him of Land by the Deed, and the Deed was *I. N.* yet good, because he may be known by

one or the other, but if the Deed be *W. S.* or of the Mannor of *D.* where he alledgeth a Feoffment of the Mannor of *S.* the same is not to the purpose: and that was agreed by all the Justices, who also said, that although he might have pleaded the Feoffment without Deed, yet when he alledgeth a Deed, and shewes it, he shall not have advantage of the Feoffment but according to the Deed, and he cannot have two names of the same time: also the Mannor of *D.* cannot be the Mannor of *S.* and this agrees with the case of 29 *Aff. vi. 1 H. 7. 28. Feoffments 30.*

Note, a man may make a Feoffment of a Mannor by the name of a Knight's fee, 17 *E. 3. 8. Feoffments 59.*

The Earl of *D.* being seised of a Water and a Piscary, gave them to the Abbot of *D.* and his Successors in Frankalmoigne, and in a Writ of Error brought by the Successor of a Carue of Land, and that the Land demanded is under a stream in the water, and adjudged that the Soile did passe: As by the Grant of a Pool, by *Marle, 4 E. 3. Itin Derby, Feoffments 79* See of that 18 *H. 6. Land* belonging to an Office shall passe by the grant of the Office. 8 *H. 7. 4.*

A man granted to the Abbot of *Rivaux totam partem suam piscarie de D. et quod S. salvo stagno molendini sui*, and agreed that the Soile did not passe, but adjudged that notwithstanding that reservation, the Abbot should have the fishing in the Pool, he being seised of the same after the Grant. And *Wich* said, That when the Pool is within *D.* and *S.* it should be contrary to the Grant to save the fishing there without speciall words, and especially when it is not alledged, That he used to fish there before the Grant; And he saith, that upon such usage the fishing there doth remain to him, with words *Prater Stagnum Molendini, &c. 34. A. 11. Aff. 16.*

*Kinn* saith, If I grant the profits of a Mill to one, the Scite of the Mill shall also passe. *Finchden*, Not if Livery be not of the Mill: But see here, that a woman having the third part of the profits assigned to her Dower, for otherwise she cannot be endowed of a Mill, may well be Tenant by assignment, *M. 45. E. 3. Dower 50.* By such a Grant the Mill, &c. and the Fishing, and the Pool shall passe, 16 *E. 3. Forme- 19.*

*Ralf* saith, If a man grant to me a Rent-charge, by the name of *I. R.* Knight, and I am no Knight, it is a void Grant; but of a thing which is affected by Livery it is otherwise, which *Martin* agreed.

*Strange*, If an Obligation be made to me by the name of *I. Strange* of *D.* and there is no such Town as *D.* yet the Obligation is good, which *Laris* agreed, 4 *H. 6. 1. Brief 22. see 44 E. 3. 42.*

Note, a man shall never have an Action upon a recovery where he was named, if not with averment that he is known by both names, for he shall not help himself by saying, he recovered *per nomen, &c.* for in the record the name is more materiall then the person: But upon a Contract, Feoffment, or Obligation, a man may well have an Action, al-



though he be misnamed by the name, &c. for it is onely to be regarded, he be the same person, 9 E. 4. 43. *Variance* 23.

Dower, and demanded the third part of a Mill, the Tenant vouched and shewed the Deed of binding, which was of a Place, and therefore led; yet it was not but a place of Land at the time of the Feoffment, and in seisin of the husband, and the Mill afterwards made; but he ought have shewed the same upon the Voucher, M. 31. E. 3: *Voucher* 288. See E. 3. 39. two acres demanded, the Tenant vouched and shewed a Deed of two Selions.

A man gives twenty acres of Land, *Et unum molendinum, & ego, &c. Warrantiz. omnes pradictas terras cum pratis, pasturis, &c. cum pertinentiis.* And Herle said, that the Warranty did extend to the Mill and also to a new Mill made afterwards upon part of the Land, the demand was of two Mills, the Tenant did alledge specialty that one of them was not built at the time, &c. and rebutted for the whole, M. 7 E. 3. 30. *Garr. 45. 1 H. 5. 11.*

Land was rendred by Fine to Richard for life, the remainder to B. his Son in tail, whereas B. was a Bastard, yet this is a good remainder, if he be known as Son, by *Thorpe*, 39 E. 3. 11. *Estoppel* 126. But if he were named in the Fine, Son of S. whereas in the Deed he is named the Son of R. it is not good, as it appeareth, 11 E. 3. *Quid juris clamat* 2.

*Precipe quod reddat*, The Defendant said, that the same Demandant by Deed did release and confirm to her husband and her by the name of Mariot his wife in tail: And that she was baptised Mary, according to the Writ, but called Mariot according to the usage of the Country. The Defendant did aver, that Mariot is one name in the Country, and Mary another, and that she is known by the name of Mary; And demurred, because the husband is dead, &c. And the opinion of Fineken, that the Tenant shall not be helped by this Deed, because another name, but granted that if she were confirmed afterwards by Mariot, this is good, but that must be shewed. And *Persey* said, If he had not given a proper name to the wife, yet she should have taken by the Grant. And *Writ* said, That if I do release by a name that I am known by, although I have a proper name in truth, I shall be bound, for it shall be enquired whether I be the same person, as upon an Indictment, M. 16 E. 3. 22.

Note, Confirmation of the Lord to the Tenant to hold parcell by a lesser Service, goes to the whole, &c. otherwise it is of a Release, for the causes by way of Extinguishment, and that onely to the Land comprised in the Deed, &c. M. 7 E. 4. *Confirmation* 4.

Land shall passe as parcell of a Castle, or of a Town, 5 H. 7. 9. *Bar* 143.

XV. Where the stranger to a Deed shall plead the Deed which is pleaded by a Privy to it, if it be shewed in Court, and take advantage by it, and where the party himself shall plead a Deed without shewing of it, because it is pleaded by him in another Court.

*Assise* against many Tenants, some plead the Deed of the Ancestor of the Plaintiff to themselves made with Warranty, and some plead the same Deed made to others whose Estate they have, of divers parcels of the same Lands: and this was challenged; because that when the Deed ought to be in Court against one, the others cannot have advantage by the same Deed; but it was not allowed. And note, the Deed was not shewed forth till they had all pleaded, *M. 45 E. 3. Feoffments 55*. So all agreed in an *Assise* against two, *40 E. 3. 39*. So in an *Assise* against *A.* and *S. R.* pleaded the Release of the Plaintiff to him, and *S.* pleaded the same Deed as Assignee of *R.* *11 Ass. 9*.

*Scire facias* upon a Recognizance in the Kings Bench, the Defendant pleaded a Release which remained in the same Court, as denied before, without shewing it, *24 E. 3. 13. Scire facias 129*.

A Writ of Entry against *A.* who pleaded the release of the Demandant which was denied, and depending that, the same Demandant brought *Mort d'ancestor* against the same *A.* who pleaded the same Deed in the custody of the Justices upon the issue in the Writ of Entry, and well, and a Writ was awarded to the Justices in whose custody, &c. to cause the Deed to be brought in Court, &c. *E. 1. Feoffments 112*.

XVI. Where a man may confesse a Deed to some intent, and deny it to another, and where a Deed shall be good to one intent, and not to another.

Note by *Finchden*, If a man be obliged to a Lay-man in a hundred pounds, who makes him an Acquittance of twenty pounds of it, if it be written in the same Acquittance words of release of all Actions, which the Lay-man knew not of, in an Action upon the Obligation he may safely say against that release, that it is not his Deed, and yet as to parcell it is his Deed. So he may confesse it in part, and deny it in part, *Fitz. Nota* *mirum*, that he may once confesse it, and at another time deny it, being one Deed, *47 E. 3. 3. Feoffments 57. vi C. 2. part, Throughgoods case, 2 part Goddards case, ac.*

A man makes a Deed of a Gift in tail, and a Letter of Attorney in the same Deed to deliver Seisin; and the party made the Writer to write it



in fee: And in an Affise by the Donor he pleaded this Feoffment, whether alledged the speciall matter, and that he was a man unlearned, and concluded that it was not his Deed, and agreed a good plea by the Court, as well to the Letter of Attorney, as to the Deed of Feoffment: But was agreed, if two Feoffments be written in one parchment, of a Lay-man, and his intent is to make the one, and one is onely read unto him, it is good, and as to the other he may plead, that it is not his Deed, because upon the matter they shall be as severall Deeds, 30 E.3.31. *Cur part, Pygots case*, 14 H.8.26. vi. *Br. Obligation* 73. in fine, 22 H.6.4. E.3.3.

Debt upon an Obligation which was for performance of Covenants in an Indenture, the Defendant did alledge that he was a Lay-man, &c. and the Indenture read unto him with two Covenants, &c. which he had performed and delivered, Judgment of the Action: And it was holden a good plea by *Fitz. and Bradwell*, because severall Covenants. And he could not plead, nor his Deed to the Obligation, but should avoid it by the speciall matter, because it refers to the Indenture. But see there, that where the Deed is severall in it self, and as two Deeds made, that is to say, upon severall matters, he may well confesse it in part, and deny it in part, 14 H.8.30. vi. *C. 11. part. in Pygots case*, If a Deed doth contain divers distinct and absolute Covenants, if any of them be allowed by addition, Interlineation, rasure, or otherwise in any one particular Covenant, the Deed is void in all, for although the Covenants be severall, yet the Deed is but one.

XVII. Where a Deed shall be void by rasure, where not, and where by interlyning.

**R**asure in a Release which is not in a place suspicious shall not hurt it, 31 E.3. *Feoffments* 118.

Trespasse for taking his Corne, the Defendant pleaded a Gift of the Plaintiff to his Testator, &c. the Plaintiff did alledge a Deed of the same Testator, by which he gave him the Corne back again, and the Deed was rased in the date, yet because the same did rehearse the Gift of the Plaintiff to the Testator; The opinion of the Court was, that the rasure in the date, did not hurt the Defendant shewing the deed: And so there the Plaintiff could not entitle him, by the Gift, without shewing the deed, and the issue was taken upon the Gift back again, and not upon the deed, &c. *P. 25 E.3. 5. Feoffments* 69.

Debt upon an Obligation, it was challenged because the date was rased, so it might be made beyond Sea. But an Indenture of defeasance of the Obligation being shewed of the same date, the defendant was put to answer, *M. 41 E.3. 29. Obligation* 1.

In debt, the defendant shewed an Acquittance of the same debt which was raced in the date, and for that condemned, *M. 44 E. 3. 42. Release*

*Thorp* saith, If the Indorcement of an Obligation be raced, it makes the deed suspicious, *41 E. 3. 10.*

*Scire facias* upon a Recognizance in Chancery, the defendant pleaded a Release, which being denied, all was sent into the Kings Bench, where the Plaintiff was Non-suit, and afterwards sued forth another *Scire facias* in the same Bench, the defendant pleaded the same Release being in Court, as denied before: And the Plaintiff alledged rasure in it, &c. and had execution by award of the Court, *24 E. 3. 13. Scire facias 129. C. 11.* part in *Henry Piggot* Case, where a deed is altered by the party himself, or a stranger in a material point by addition, interlineation, rasure, or other means, the deed is void, but if it be altered so by a stranger without the privity of the party, by any of the waies aforesaid, in a place not material, it shall not avoid the deed, *9 Eliz. Dyer 261. ac..*

In Wast by the Heire of the Conuzee of a Wood felled; the defendant pleaded a deed of the Conuzor before, &c. by which he granted that he might cut and sell, and the deed was raced in one place, but because it could not be perceived what was written in that place before, the Plaintiff was put to answer to the deed, &c. *Fitz. Note that Bar*, for some said he shall be put to his Writ of Covenant, &c. *30 E. 3. 8. Bar 267.*

*Scire facias* to execute a Fine by him in the Remainder, the Writ was abated for one name raced, *45 E. 3. 18 bar 590.*

Debt by an Executor, he shewed the Will, where the word, Executor, was raced, yet good, for it appeareth in the Registry: And the defendant also shall traverse if he be Executor, notwithstanding the Probate, *6. 32 H. 6. 52. Executors 17.*

Debt upon an Obligation by *I. T. Grocer of London*, and (Grocer) was interlined in the Obligation, yet the Writ good by award, by *Thirne* And this is to the Action, as rasure against the opinion of *Hankford and Hill*, *Quere 14. H. 4. 19. variance 47.*

**XVIII Where a Debt shall be cancelled, where not.**

Debt upon an Obligation, the defendant pleaded a Release of all Actions, &c. and at the day of the Inquest he made default, for which the Plaintiff recovered according to his declaration: And the Obligation was cancelled, because he recovered in a Mannor on the confession of the defendant, *41 E. 3. 11. Condemnation 14.*

It is there said, if the defendant had denied the Obligation, and it had been found against him, now should not (it) have been condemned, because he might have an Attaint. But see *10 E. 3. 24.* That Attaint doth



doth not lye in the case, but that the Obligation being denied and found for the Plaintiff, it shall be cancelled, *Judgment* 207. 9 E. 4. 54. by *Larkton*.

And if in Debt upon an Obligation, the Defendant plead an acquittance, which is found for the plaintiff, the Obligation shall be cancelled and pendant that issue, the Obligation shall be delivered to the Plaintiff. *11 H. 4. Debt* 114.

Debt upon an Obligation against Executors, who plead, fully administered, and this is found for him, the Obligation ought to be cancelled: See that by that plea it is confessed, and the redelivery to the party bolden Error. *Hulls* said, where a deed is denied and found for him who alledgeth it, it shall be cancelled, not if it be found against him, for he may have an attain, *P. 7. H. 4. 39*. See contrary in the last point, *H. 11 E. 3. Judgment* 125.

In a Plea of Land, the Tenant pleaded a Release, which was found false, and there were witnesses in Court, and the Court would not damn the deed, but Sir George Scrope did otherwise, *M. 12 E. 3. Judgment* 164.

One *W.* who was taken upon a Statute Merchant sued forth an *Antea Querela* upon an Acquittance, and at the day of the Enquest was Non suit, and the deed was not cancelled, for he may have a new *Antea Querela*, by *Wilby*, 22 E. 3. 4. *Judgment* 183.

Debt upon an Obligation, the defendant saith, that the plaintiff had recovered upon the same obligation by plaint before the Mayor of *N.* and had execution &c. *Schard*, wherefore was it not cancelled then, and you shew no acquittance, for which it was awarded that the plaintiff should recover, and sue now that the deed may be cancelled, *17 E. 3. 24. Bar* 246.

### XIX. Where a Deed shall be said sufficient to maintain a Form in the remainder.

**A** Formedon in the Remainder, as right heire of *J.* the Son of *J.* of the body of *Jane* the daughter of *J. Candy* begotten, and shewed Deed, by which the remainder was given to *J.* son of *P.* begotten of the body of the daughter of *J. Candy*, and did not name her proper name yet adjudged a sufficient Deed to maintain this Writ, for daughter in good name of purchase, *30 E. 3. 18. Feoffments* 64.

Formedon in remainder, the Demandant shewed a Deed by compulsion which proved the Land given to *R.* and *S.* to have and to hold to *R.* for life and after his decease to *S.* and his heirs, and for that challenged because the Demandant as heir of *S.* supposed by the Writ, and counted that *R.* was Tenant for life, the remainder to *S.* yet the Deed was holden sufficient by *Herl.* and that their estate should be according to the limitation of the *Habendum*, *M. 8. E. 3. 53. Feoffments* 73.

formedon in the Remainder upon a Debt, which was *revertantur*, where the writ was *revertantur*, yet good as to that, and the Tenant cannot say, that he did not give by that deed, but he might well plead that nothing passed &c. 10 E. 3. 1. Feoffments 76. and therewith agrees 8 E. 3. 28. Feoffments 61.

XX. Where a Deed shall be void by words comprised in it, and of no value, although it be delivered as his deed, and where by such words part of the grant shall be abridged, and where subsequent words shall be void; and of exceptions in a deed.

W. Did enfeoff 7. 7ode, who made a Charter of Feoffment to the same W. and a Letter of Attorney to R. to deliver Seisin after his death, who by force of the Warrant of Attorney delivered Seisin to W. in the life of 7. who was presently after upon the Land, claiming nothing of his former estate. W. did enfeoff divers of the Parishioners for the amending of their Church, 7. was not upon the Land at the time of the seisin delivered, but did assent to it, and afterwards the Parishioners leased the Land to a stranger for life, upon whom 7. entred, and the better opinion was, that his entry was lawfull, for the Livery was a disseisin to 7. as Fitz. renders it, but Wyck, said not, but that W. was Tenant at Will by force of the Deed of Feoffment and Livery, although it was not according to the warrant of Attorney, 40 Aff. 38. Feoffments 89, vide 18 H. 6. 16.

A man granted ten pounds of Rent, in his Mannor of D. to perceive so much by the hand of such a Tenant, and so much by the hand of such a one, &c. and although that the whole ten pounds was so limited to be taken, yet it was holden that the Demesne Land which was charged to the Assise by the premisses of the Deed, was not discharged there, and so the party ought to bring an Assise, &c. 7 E. 3. 9. Assise 112. and see 15 Ed. 3. 3. Charge 9. where upon such a deed, the Assise was awarded, as of Rent issuing out of the whole Mannor, See of this matter, 1 E. 3. 21. 5 E. 3. 66. 15 Aff. 11.

A. enfeoffeth B. to hold by six pence for all services. *Et ex illis 6d. faciat opus solvi debet quando evenerit, quantum pertinet ad tantum terre*, and it was adjudged that it was but Socage, for there is no sufficient word in Law to reserve escuage, 27 Aff. 52. Aff. 258. and it was afterwards argued, 31 Aff. 307. and the opinion as before, and there Mowbray saith, If a feoffment be made to hold by a penny, and by escuage, for all services, it is but Socage. But it is agreed there, that if upon such feoffment as *Salvo forinseco servitio*, for doing the services due to the cheif lord, the Feoffee shall hold in Knights service, if his Feoffor held so o-



ver of the Lord Paramount, and according to that issue was taken upon the holding over, 25 E. 3. 10. Bar 21. 40 E. 3. 10.

A man leases two acres rendring for one acre 10 s. per annum, to him and his heirs, and for the other 10 s. speaking nothing of his heirs. There appears no certainty in the Reversion, yet it seems to be admitted there, that ten shillings are extinct by the death of the Lessor. See there, that seisin of him who claimeth as guardian, although there was no ward of Right, is seisin of the heir, P. 11 E. 3. Affise 86.

A man granted to the Abbot of R. *Totam piscariam in aqua de Tiff, &c. salvo stagno molendini sui*, which was within the bounds, in which the fishing was granted, and adjudged, that by that *Salvo*, the course of the water necessary for the mill, is reserved; but not the fishing in the same poole, for here is not a distinct fishing from the water in the poole before, when he himself was seised of all the water, &c, 34 Affise vi. Affise 316.

A man granted an Annuity of 4 l. unto the husband and wife, and if she did survive, that she should have 40 s. yet it was holden by Herle, that she overliving should have the 4 l. because there was no negative words, that she should not have more, 8 E. 3. 23. Affise 143.

I gave a Carue of Land to R. with A. his daughter in Frank marriage, *Habendum sibi & heredibus, vel cuicunque assignare voluerit, reddendo per annum 12 d. eidem J. & heredibus suis pro omnibus serviciis*. A. died without issue, and afterwards R. let the Land to a stranger, against whom J. brought a writ of Entry, and adjudged that the stranger should hold the Land during the life of R. and that after his decease the Land should revert to J. and to his Heirs, 13 E. 1. Formedon 63.

A man leaseth for years by Deed, and grants that if he alien the Term or dieth within the Term, that the Lessee shall have for life and Livery, and Seisin made accordingly, and afterwards he grants the Land by Feoff to Plesington, who sueth a *Quid Iuris clamat*, the Lessee claims Freehold by the Deed, and adjudged that he shall forfeit his estate, because the condition is against Law, as to the alienation. But good in the other point, and he might have saved that advantage by attornment with protestation. Also a condition, that if he be ousted by the Lessor, during the Term that he shall have Fee, is good, 6 R. 2. *Quid iuris clamat* 20. 7 E. 3. 45.

XXI. Where a Deed bearing Date in Wales, Scotland, or beyond Sea, is void, where not.

**A**vowry for a Rent-Charge in another place then the plaintiff declared, by a specialty bearing date in Wales, and Hi' said, that the Deed shall be entred, and that if the issue taken upon the place be found with the avowant, he shall have return, H. 20. E. 3. Avowry 127.

Debt against a Prior alien, and declared, that he with the assent of the Court bound himself to the Plaintiff, and because the Deed bore date in *England*, and by no intendment the Covent could not be there, was thought by all the Councell, and by all the Justices, that the Deed was waighe, *C. 13 E. 3. Abbe 12.*

An Affise of a Corodie against a Prior alien, Farmer of the King in time of Warre, and the Deed bore date beyond Sea, but the Seisin and Disseins were found. Also the Attorney of the Prior had confessed the Deed, wth the Deed better then if it had born Date in *England*, where the Covent was not, as it was touched according to the Judgment, *13 E. 3. Abbe 12. Aff. 43. Affise 155. vide 14 E. 3. Abbe 11.*

Debt upon Obligation dated at *Barwick*, and the same being challenged, the Plaintiff took nothing by award of the Court, *M. 2. E. 2. Obligation 15.*

A Grant of King *Henry* the fifth, bearing date at *Burdeaux* in *France*, was pleaded and admitted good, and so it was confirmed by the King and by the Parliament, *39 H. 6. 34. Grants 15.*

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**XXII.** Where a Deed, Record, Letters patents of the King made before time of memory, shall be good at this day. &c

**N**Ote a Deed of King *Henry 2.* made before that he was King, is to no purpose, but for Evidence, nor with Confirmation of it after he was King, but his Deed when he was King is holden good because of Record, *12 H. 4. 23. Avowry 58.*

A Charter of King *Henry* the first admitted good, *38. Affise 22. Grant 1.* The King shall not avow against a Deed of his Ancestor, before time of memory, by *Screen, 12 H. 4. 24.*

An Appropriation by the Charter of *William* the Conquerour, and admitted good, as to the time, *7 E. 3. Quare impedit 19. and 29 E. 3. 21.* the Charter of King *Henry 2.* admitted good, and *3. Itin. North.* the Charter of King *Hen. 1.* to be quit of Pontage, was admitted good, *Affise 445.*

A Charter of *William* the Conquerour, of Conusans &c. and with allowance alledged in the Kings Bench, and in another Affise, was allowed in an Affise, See the Grant, *12 H. 4. 12. Conusans 21. 34 Aff. 14.*

But see *9 H. 7. 10.* By the Justices adjudged, that Conusans shall not be allowed upon such Charter, without allowance also alledged in *Eyre. Conusans 16. vide 26. Aff. 24. Conusans 57. 14 H. 6. 12.*

And see *1 E. 4. 6. and 2 E. 4. 21. and 24.* agreed that the Charter of the King, nor no other Record made before time of memory, is now worth any thing, and therewith agrees *8 H. 6. 4. and 19 H. 6. 75. by Newton, and 9 H. 7. 10.*



XXIII. *Where a Deed or Obligation in the third person is good.*

**N**Ote by the whole Court, that an Obligation made in the third person is good, (s) *Memorandum* that *T. B. dedit I. S. 100 s. solvend. &c. In cuius rei &c. sigillum suum apposuit.* So of a deed, *Præsent scriptum est &c.* and as well as it is of an Indenture, *P. 8. & 4. 5. Obligation 9.* In such an Obligation made in the third person was adjudged void, *40 E. 3. 2.* and therewith agrees *Hanchford, 2 H. 4. 10.* and he saith that such an Obligation is void by the Statute of *38 E. 3. cap. 4.* See *22 E. 4. 21.* I promise to pay, or I shall pay, sufficient words of an Obligation.

XXIV. *Where the Seal of the Deed shall be sufficient, where not.*

**D**Ebt upon an Obligation of *20 l.* which was endorsed to be payed at two dayes &c. and of the first day the Defendant shewed an acquittance, and that he was ready at the other day. *Hulls,* the Acquittance hath no print of any Seal, and to the rest he was not ready &c. *Thurs.* The issue shall be upon the one, for each goeth to the whole &c. *14 H. 4. 11.* *Double plea 69.* So the acquittance without a sufficient Seal is nothing worth.

A *Scire facias* against a Prior for an annuity recovered, he demanded Oyer of the deed, and had it by the opinion of the Court, and the Seal was wholly bruised, yet because it was an ancient Deed, and part of the Seal did remain, and also the Seal lately broken, it was holden a good deed, *6 R. 2. Monstrans de faits 159.*

XXV. *Where one Jointenant or coparcener shall enfeof his companion, and where it passeth by Confirmation.*

**N**Ote by *Newton* clearly, that one Joint-tenant cannot enfeof his companion, because he cannot make Livery, but if it be by deed, perhaps it shall enure by way of Confirmation, *H. 22 H. 6. 42. Feoffments 11.*

A Deed of Feoffment, which hath also the word Confirmation may be so used, as the party will, but if he once use it as a Feoffment, he shall never after use it as a Confirmation, *21 H. 6. Feoffments 102. vide 34 H. 4. 38.*

*Martin* saith, That one Jointenant may enfeof his companion, as by Lease and release in his possession. *Paston* denies it, and saith, that that is but an extinguishment of his right, for the Land doth not pass, *14 H. 6. 10.*

One Parcener may enfeoff the other by Livery, and the Land shall passe, and shall be vouched, 10 E. 4. 3. 17 E. 3. 46. *Counterplea of Voucher* 41.  
One Copareener granted her moiety of the Advowson to the other, this a good grant, and may be averred good without deed.

**XXVI.** *Where a Feoffment, &c. shall be made to the King by deed enrolled, or by him to another, where not: And of gift of Goods to the King.*

**N**ow by *Danver*, If I make a deed of Feoffment of my Land to the King, and deliver it to him, or deliver the same into the Exchequer, to his Coferer, the right of the Land is in the King, although the deed be not enrolled. The same Law of a gift of Goods, which the Court granted, and he held clearly that a gift of Goods to the King is good without deed, 37 H. 6. 10. *Feoffments* 18. 21 H. 7. 21. 49 E. 3. 11. 40 *Aff.* 21.

Now, the King cannot be enfeoffed by deed without enrolling of it, for livery cannot be made to him. Also he cannot be seised to another's use: And if the husband and wife would acknowledge a deed in the Chancery, it cannot be received, no more then a Fine in that Court, by *Markham*, 5 E. 4. 7. E. 4. 16. *Feoff.* 21. 1 H. 7. 29. and 31. ac. 4. *Car. in B. R.* Ten. in tail, in remainder, grants his reversion by deed inrolled to the King: It was holden, that although there was no Seifure nor Office found, yet the deed being inrolled and certified into the Chancery, did sufficiently entitle the King, 5 E. 4. 8. 14 E. 4. 12. b. *Plow. Com.* 31. in *Colthirst's* case, ac.

If a man lease his Land for life, the remainder to the King, it shall not passe before the deed be enrolled, and then it shall passe *ab initio*, &c. 1 H. 7. 29. *Feoffment* 30. vi. 8 H. 7. 11. A Bailiff shewed that a Lease was made for life, the remainder to the King in Fee, and prayed in aide of the King, and a *Procedendo* granted.

A devise of Goods to the King without a Testament, or Deed, is good, and he shall have them in whose hands soever they come; and of Lands which the Devisor had to Farm, 40 *Aff.* 35.

A reversion devised to the King being found by Office, is good: As a condition by Verdict found at large in an Affise, but the reversion shall not be found *per Affise*, without shewing of a deed; And the King shall not have advantage of a Contract made to a man who is outlawed found by Office, in *Fitz.* reads it, against 49 E. 3. *Grants* 52. 49 *Aff.*



XXVII. Where by Livery and Seisin made in one Deed the whole shall pass, and where the Reversion and Remainder by Livery; where by the Livery, not by the deed, and where more or less shall pass then is contained in the deed of Feoffment, and where a Remainder, or a Reversion shall pass by Livery.

**I**F I make a Lease for years of an acre, and make a Feoffment of it and another acre, and make Livery in the other acre in the name of both, the acre in Lease shall not pass without Attornment, 7 E. 4. 20. Feoffments 22. vi. C. 2. part, *Bessworths case*, the Livery is void for the whole, 28 H. 8. Dyer 18. 29 H. 9. Dyer 33. 11 Eliz. Dyer 283. 21 Eliz. Dyer 362. ac.

And by Livery of two parts of a Mannor, the Reversion of the third part shall not pass, although it be comprised in the deed, 23 E. 3. *Darnley presentment*, 1. 18. Ass. 2. And note, that the Entry in one acre is not an Entry in the whole, although it be made in the name of the whole, if he hath no right of Entry, 39 Ass. 26. The same Law of Feoffment; but by such Feoffment all shall pass in the same County, not in Lease, 83 E. 3. *Stopell* 127. *Lit. fol.* 180.

A man was seised of the Mannor of *D.* and Lessee for years of other Lands parcell of the Rectory of *D.* all in date, he bargained and sold all his Mannor of *D.* and all his lands in *D.* but before the Bargain he made an under-Lease of his lands, parcell of the Rectory in *D.* and afterwards he levied a Fine of all his Mannor and all his lands in *D.* It was adjudged in *Fancet*, and *Andersons case*, at York Assises, 1633. by *Damport* Chief Baron, that the Fine did not passe the leased lands, which would have passed by Livery, although it had not been made upon the leased lands, but the other lands.

It is said 9 H. 7. 25. If a man hath one acre for life, and another acre in fee, and maketh a Feoffment of both, and Livery in that in fee, the other also shall pass, which should not, if it were a Lease for years.

*Choke* held, that a Feoffment of him in the Reversion and Livery, without putting out of the Termor shall be good, 33 H. 6. 41. 2. Ass. 2. 7 E. 3. 23. Feoffments 70. 2 E. 3. Feoffments 78. that it shall not pass, where the Termor paid the Rent to the Feoffee. ac. 11 H. 4. 19. 19. But if the Lessor for life or years puts out the Lessee and makes a Feoffment, and the Lessee doth re-enter, the fee doth remain in the Feoffee. E. 3. Feoffments 162.

So where the Issue in tail recovers against the Discontinuee of his Father who hath Fee, &c. 14 H. 4. Feoffments 45. And where there is Tenant for life, the Remainder to a stranger for life, the Remainder to the Tenant in fee, if the Tenant grant his Estate to another and his Heirs the

shall well pass, although the Estranger in the Remainder surviveth  
*44 E.3. Aff. 56.*

A gift of goods or of lands to two, and delivery to one is good for both, and delivery of them to another afterwards, is void, *18 H.6.9.* And it is good for all, being to one in the name of all, without a Deed of the Feoffment, with their agreement as a remainder by livery to the Lessee for years or life, but not without agreement, where it is upon a Lease for life, *18 E.3.12.*

But it is holden not good, *15 E.4.18.* without Deed, but that those who are absent at the Livery may disagree in *pais*, and thereby every stranger shall have his Action Paramount, without naming them, *7 E.47. contr.* and that they shall not so disagree, and therewith agreeth *13 R.2. Joyn-tenant: 9.*



# FEOFFMENTS AND LEASES.

*I. What things shall pass without Deed, and where the Action or duty shall be extorted without deed.*

**A**N Advowson in grosse from one Coparcener to another shall pass without deed: So of a Rent granted for equality of partition, and a composition to present by turnes to an Advowson, they shall be good without deed, *H.11 H:4. Feoffments 40.* And upon partition of a Mill and Meadow, an agreement that she which hath the Mill shall have a way to the Meadow is good without deed, *21 E.3. Monstrans de fait: vi.20 E:3. Monstrans de fait: 72.28 H:6.2. ac.vi. 18 E.4. Dy3 40.* Drains betwixt *7 opit* and *Pan* a way for making partition without deed, *19 H.6.25. ac. 11 H.4.61. 44 E.3: ac:21 E:3.2. Nusans 2.19. E:3. ibid:3. ac. 47 H:3.22.9 Aff: 11.3 H: 42. vi: & quare.*

Dower



Dower *ad Ostinum Ecclesie*, is good without deed, even of lands which are in another County, if they be within the View; But of Dowment *concentu patris*, there ought to be a deed proving his consent, 40 E.3. 41. Feoffments 48. Lit. 8. b. ac.

*Quare Impedit* by the Feoffee of a Mannor, to which, &c. the defendant said, that the Ancestor of the Plaintiff did enfeoff him of an acre parcell of, &c. with the Advowson by that deed.

Herle, The Issue shall be, whether he granted, and the deed is not materiall, &c. 5 E.3. Feoffments 73. and 43 E.3. agrees. But where the husband makes such Alienation of the right of his wife, she may well prefer without recovery of the acre; And there it is not spoken of any deed, 22 P.3. Feoffments 116. 22. Aff. 7. 43 E.3. 26.

It was holden that one Coparcener might grant her part of an Advowson to the other without deed before partition, or after, for it was there holden that it shall pass without deed, because the Grantee shall not shew the Deed after that he hath once presented, and the Presentment doth not gain the possession by the one Parcener against the other. *Quare* of that, M.20 E.3. Monstrans de faits 72.

An Apprentice cannot be made without deed, for which cause he shall not be discharged without deed, H. 21 H. 6. Monstrans de faits 116. and M.6 E.4. Bar 89 contrary, because he cannot serve him at his Will.

Lease by the husband and wife good without deed or fine during the Coverture, but if she after alone bring *Terminum qui praterit*, it seems it will not lye without a deed, because he may make the wife a party, 17 E.3. Monstrans 10.

Account against a Receiver, it is no plea that the Plaintiff granted him to retain for a certain debt which he owed him, but he was awarded to account, 11 H.4. 18. and 14 H.4. 21. and see 16 E.3. Account 53. which in such case Thorpe said, Shew us a deed of the Grant to retain, but there the Plaintiff did maintain his Writ, and 28 H.6. Bar 49. upon such plea, the Defendant was awarded to account without speaking any thing of a deed, &c.

An agreement was betwixt the Obligor and Obligee upon account made; That the Obligor should retaine the money for the arrearages which the Plaintiff owed him, and it was holden a good bar without deed, 7. 12 R.2. Bar 243. So in Debt upon a Contract, 33 H.6. 48. Debt 56.

A Rent parcell of a Mannor shall pass without deed, and without attornment, but there the Plaintiff was abridged for want of Attornment, 37 H.6. 26.

One Coparcener leased her part to the other, before partition for years without deed, and a good Lease, 21 E.3. Partition 9. 2 H.7. 11. 17. ac. 21 E.3. 2. pl. 9. 21 Aff. 1. ac. 21 H.6. 11.

## II. Where a Lease, or Devise made by a Feme-Covert is good, and where a Feoffment during the Coverture.

**A**ccount against *A.* as Bayliff, that upon debate betwixt the Plaintiff and his wife, by the agreement of friends of the Plaintiff, the Plaintiff did assigne the Land to the wife for her livelyhood, and that the wife did lease the same to him, and the Plaintiff was driven to answer to the lease of his Wife, 47 E. 3. 18. Account 42.

If a Feme-Covert do alien her land when her husband is gone out of the Country, yet this is void, and a Disseisin to the husband, 9 E. 3. Feoffment 73.

If my wife go away with an Adulterer, and levieth a Fine, I may well enter, and thereof the Heire of the wife shall have advantage. But if my wife take another husband, the wife nor her Heire shall avoid it.

*Case.* The Fine is void against her being named wife of *T.* where she is not his wife, 7 H. 4. 43. *Scire facias* 65.

If a Feme-covert levy a Fine upon a Render, she shall not avoid it, although that she and her husband continue seised after the death of the husband: But if a *Scire facias* was sued against the husband in tail of his Wife, and the Husband made default, she should be received to avoid it, 17 Aff. 17 *Esoppell* 135. But the entry of the Husband upon the Conu- zee of the Wife shall avoid the Fine for the whole, 9 H. 6. 34. 18. H. 6. 27. 32 H. 6. 31. vi. C. 101. part, 15 E. 4. 8. 14 E. 45. A Feme-covert shall not be barred of her Inheritance, but when she is examined in due course of Law. vi. C. 10 part, in *Portingtons* case, the Fine shall bind the Wife and her Heirs, if the husband do not enter and avoid the Estate of the Conu- zee, because she was examined and had power of the land.

The Devise of a Feme-covert in fee to her Husband, is good, 31 Aff. 3. but see 3 E. 3. *Devise* 12. that such a Devise is naught. But 10 H. 7. 20. A Feme Executrix sold the land to her Husband, and the Feoffees ought to make the Estate accordingly. But there the Devise of the Wife *Cestui que use*, that the Feoffees shall make an Estate to her husband was holden void by all the Justices, except *Tremaile*: But the Wife *Cestui que use*, she and her Husband sold the land, and she received the money, and after the death of the Husband the Vendee had a *Subpana*, 5 E. 4. 18. 18 E. 4. 11. *Fre: Devise* 15. vi. old *N: B.* in the Additions of *Ex gravi querela*, and that the Devise is not good.

Now, there the Devise was said to be by usage in *Nottingham*, 3 E. 35.

29 E. 3. A woman seised of Land devisable, took a Husband, and had Issue, and devised the land to the Husband for his life, and died. Waste was brought against him as Tenant by the Curtesie, and it was there holden, that he was not seised of the land by the Devise. See more by the Statute of 34 H. 8. cap. 5. such Devise of the Wife is void.

Pasch:



*Pasch: 25 Eliz: in C:B: Skipwiths case*, A Custome was alledged, that *Qualibet femina viro cooperta potuit* devise her Copyhold lands to her Husband, and surrender them in the presence of the *Reeves*, and six persons, and adjudged not good Custome, because of the incertainty, and against reason.

A Lease by the Husband and Wife without Deed, and during the Coverture, shall be said the Lease of them both, or after, 7 E:3. *Manfron de faits* 10 6H.7.3.

III. Where a man shall be Tenant at sufferance, and what shall determine a Lease at Will, and where a Lease at the wil of the King is good.

A Lease at Will is determined by Outlawry of the Lessee in Trespass, 9 H:6. *Feoffments* 93. yet the Escheator shall not seise the Lands, but the profits, and if he do, he is a disseisor, 9 H:6. *Aide de Roy* 17.

Lease at Will of a Pisciary by the Bishop, by whose death the Temporalities are now in the Kings hands, and aid of the King in Trespass, 4 H:6. *Aide of the King* 10. 3 H:6. 11, 12. seems contrary in the same case, and that such Tenant shall not have aid but of his Lessor: Otherwise it is of Tenant at Will by Custome, &c. P: 11 H:6. *Aide of the King*, 22.

And although that such Lease is determined, by the death of the Lessor, yet in pleading against a stranger in Trespass, it needs not to suppose his life, 10 E:4. *Replication* 34. vi. 27 H:8. 34. 4 H:6. 2. 33 H:6. 37 H:6. 11 H:4. 91. 21 H:6. 38. Tenant at Will shall not have aid of his Lessor, 9 Eliz. *Dyer* 258. 22 E:4. 28. vi.

It was agreed that Tenant at Will shall not cut under-woods without license, 2 E:4. 26.

*Vi: 21 E:4. 5.* seems contrary, vi: 12 E:4. 6. 8 E:4. 7. he cannot cut under-woods, if not by Custome, *per Lit: quod nota*, and by him, by the Common Law, Waste did not lye against him: So by that Law he could not cut Woods.

If I lease a Mannor at Will to which Common is appendant, and put in my Beasts in the Common to use it, it is a determination of my Will, 14 E:4. 6. So if I sell Trees there growing, as it seems by that the Verdict shall justify the Entry into the land for them, &c. 35 H:6. 29.

*Vi: 21 H:7. 34. 13 H:7. 13.* If Tenant at Will be distrained for his Rent arreare, and his Cattell impounded upon the Land, it is a determination of the Lease, and a lease at Will may be determined by commandment. The Lease shall be at the Will of each party, and therefore if it fail at the Will of the Lessor, that word (*the Lessor*) is void, for the Lessee shall leave it at his Will, *M: 20 E:4. 9.* and because such Lessor has such liberty, the Lessor shall have Trespass against him, so as if he dies.

But Lessee at Will cannot grant over his Estate, 12 Edw.

4. 1. 18 H. 6. 1. acc. 39 H. 6. 18. A Lease at the will of the Lessee or stranger, is void; for then he should have a free hold without Livery. 35 H. 6. 63. a Lease at the Will of the Lessee with Livery is an estate for life, *contr.* if without livery.

Tenant at sufferance shall take Cattell damage Feasant, and maintain trespass, if the other plead not guilty; But if he plead specialty, the other cannot make title, 4 H. 7. 3. Tenant at will, 10 H. 4. 2 E. 4. 6. acc. 35 H. 6. 24.

42 E. 4. 35. Tenant at will by custome, sows the land, and before severance, will not do his services, the Lessor enters, the Lessor shall have the Corn and not the Tenant at will.

Lessee at Will shall present to an advowson, if the Lessor will suffer him, 33 H. 6. 34. and the Lessor shall not put him out, after the Land is sowed with corne, 35 H. 6. 29. vi. C. 5. part Olards case,

If the King leaseth by Patent to hold at the Will of the King, rendring rent to the Exchequer, the Lease is at the Will of the King only, 8 E. 2. Diner 169. 42 Aff. 22.

A Release to Tenant at will is good, but not to Tenant at sufferance, 3 E. 4. 6. 8 E. 4. 16 ac. 21 H. 6. 37. 27 H. 6. Release 6. ac. Lit 107. Pl 461. ac. Yester 23 E. 4. 38. by Hussyey, That Tenant at sufferance hath a fee in law, and a Writ of *Ad terminum qui preterijt*, lyeth against him, which is a *Præcipe*.

See 23 E. 4. 13. and 14. Trespas, *Vi & armis* lyeth not against Tenant at sufferance, because he came not in first by title, vi. *Plow, Com.* 13. 7 E. 4. 6. 31 E. 4. 76. *Br. Trespas* 365.

If Tenant at Will be put out by a stranger, the same shall not determine the Will of the Lessor, yet by his entry, the freehold is not re-conferred to the Lessor, 38 H. 6. 27. But if the Lessor release, to such a Disfeisor, there his will is determined.

9 E. 4. 33: *Quare* If upon the entry of the Lessee, the Lessor shall not have Assise against a stranger, because the possession of the Lessee doth continue the land in his Lessor.

IV. Where a man shall have a free-hold determined at his own Will, and where at the will of another, and where at a certain time till monyes levied, or till such a Tree shall grow,

Leased lands to B. *Dummodo solverit* unto the Lessor during his life, 20 l. *Per annum*, the one hath free-hold in the Land, the other hath the rent, all determined at the will of the Lessee, if he cease to pay the Rent, P 3 E. 3: Aff. 172. T t t The



The Plaintiff in an Assise took an estate for life upon condition, that the Tenant acknowledge a Recognizance to him, or else he did not agree to it, but that all should be void: *Stone*, He hath abated the Assise, for although the condition be not performed, the Estate is not void, without entry, also the condition is not good, because it doth not express that he shall re-enter, if &c. *M. 10 E. 3: Ass. 163:*

Assise of Rent by grant of two markes, untill ten markes are payd, and the Defendant tendred the rent, *M. 33 Ed. 3: Ass. 367:* But it seems such a grant untill ten markes levied, shall be but a Term, and so like to the first case, but no deed was shewed, proving the determination, so it could not be found, *33 Ass. 15: verdict 42:* But a Feoffment of lands untill he hath levied 20 l: makes a good free-hold, *P. 21 E. 3: Ass. 102:*

A Lease for years so long as such a tree shall grow is good, *29 E. 3*, for it is sayd, That a Lease so long as *T:* shall live, is but a Tenancy at will without Livery, *14 H. 8: 12:* But a feoffment so long as *T:* shall live, or such a tree shall grow, is a good fee, *27 H. 8: 29: 10 E. 3: Account 58:* and where a Feoffment is made for years, the heir shall have it after the death of his Father, *11 Assise: Assise: 197: 8 H. 4: 15: 7 Edw. 4: 11: and 21 H. 8 Brooke.*

V. *Where a man may enfeoff his wife, and where a feoffment of a stranger to a feme Covert, is good, and of the feoffment of the Husband alone, the wife being upon the Land.*

**A** Feoffment to the wife at the Church dore, of land within the view, is good, notwithstanding the marriage, before entry, *38 E. 3: Feoffments 47.*

See *4 H. 7: 4:* That hee cannot by any means enfeoff his wife after the Marriage, and a feoffment to the wife *Post fidem datam, & copulam habitam*, is void, although it be before the marriage, *M. 16 E. 3: Feoffments 117.*

*Perkins 40 contr.* That at this day, such a feoffment is good, but at this day after marriage solemnized, a man cannot enfeoff his wife.

*Fisher* saith, That a man may make a Lease to a stranger for a Month, the remainder to his wife, *4 H. 7: 4.*

Where the husband and wife acknowledge the right of the husband by fine, the Rendor shall be received to them, and to the heirs of the wife, because the husband cannot give his right to his wife, *21 E. 3: Fines 87.*

Note, Husband and wife Joynt Tenants, the husband may well make a feoffment of the Land, although the wife then, and at all times be upon the land, and will not agree to it, *21 Ed. 3: Feoffments 65: 464.*

## VI. Where by the Habendum, or Reservation, the Estate precedent shalbe changed, altered, or enlarged.

**L**and given to a man and the heirs of his body, *habendum* to him and his heirs, *M 21 H 6 Feoffments 35*; *Finchden* agrees, where land is given to husband and wife in taile, to have to them and their heirs, or to the heirs of the Husband, for every Estate may be saved; otherwise it is, where the gift was in frank-marriage &c. because when no reversion is in the Donor, it is no frank-marriage; but is a fee presently, *45 E 3 20 Tail 14*. And *Persey* saith there, That a gift in fee to have in taile is a fee simple, but *21 H 6* and *Perkins 35* contrary, and hee shall have taile, and fee expectant.

When a gift to the husband and wife in frank-marriage, to have to the husband and his heirs, the wife hath but an estate for life, *19 H 6 22: 45 E 3 20*. But see *P 2 E 2 Feoffments 94 13 E 1 Formedon 63, 32 E 1 Taile 15* that in such case, the *Habendum* shall be void, because contrary to the premises, and doth devest an estate given, and so it shall be frank-marriage and not fee, see *16 E 3 verdict 21*.

*Poff 45 Eliz in Com. Bench in Webb & Potters case*. The deed was *de- di & concessi, I W and in Liberum mortagium Iohanne filie sue habendum eidem I. W. & heredibus suis in perpetuum tenendum de Capital: B. A* It was objected, and *9 E: 3: 13 E: 1: vide 25: 3 H: 4* by *Hil*, vouched that it was a good frank-marriage, and a difference taken where a remainder upon a frank-marriage is limited to a stranger, and where to one of the Donors: But after judgment, it was resolved by the Lord *Dyer* and all the Iudices, that it was not frank marriage nor taile, but a fee-simple in the husband, and the old books denied for Law, for here was an expresse limitation of a fee to the Husband, which shall not be contradicted by a *moment*, and the husband had the whole Estate and the wife nothing, and the words of grant, were not the words of frank marriage, for then it should have been *In liberum mortagium cum Iohanna filia mea* in the above case.

And a Gift in frank marriage *Habendum* to them, and to the heirs of their bodies is good frank-marriage, *vi. guard 116*:

*13 E: 1: Tail 116*: If a gift take once effect as a Frankmarriage, and afterwards the Donor grants the Reversion over, or the remainder doth descend to the Donors, the estate shall not be destroyed, but shall remain upon the taile, because it once took effect in the donees and their heirs as frank-marriage.

Land given to *R and S: Habendum* to *R*; for life, the Remainder to *S* after the death of *R: S* shall have to him and his heirs, now *R* shall have for life as *S* doth suppose in a *Formedon*, *8 E: 3: Feoffments*



73: but a gift to two, to have to one alone is a void *Habendum*, 19 *Edw. 3. Taile 1.*

A gift in Frank-marriage, or in Frankalmoigne, rendering Rent, how it shall enure, or shall be void, see 10 *Aff. 26. 13 H. 4. Mesne 74.* A gift may be upon Frank-marriage, but see 4 *H. 6. 22.* by *Martin*, such a reservation is void, 26 *Aff. pl. 66. acc.*

A gift in frank-marriage, tail, or fee, to have for life, is void, but a generall gift, to have for years shall be good 19 *E. 3. Taile 1. On the first* is where it passeth by Livery, for by such generall grant of an Office, he hath but at Will, yet by such generall grant of a Rent charge, he hath a free hold as it seems, if there be not such an *Habendum* as maketh certain, 7 *Ed. 3. Aff 132.* And *Quere* if there be a difference, where a man who hath an Office, granteth it; and where the Lord makes an Officer without limiting any Estate, &c.

The King grants a Mannor, to have *Simul cum* another Mannor, or with an Advowson in grosse; the Advowson nor the other Mannor shall not pass: Otherwise it is, If I grant *Manerium de D. cum manerio de S. quare*, for *Paston* held it all one, 9 *H. 6. 27.*

A Man leaseth a Mannor for life, saving the Advowson appendant, and afterwards granteth the Mannor, *Habendum cum advocations Ecclesie*, it seems the advowson shall not pass, 38 *H. 6. 40. 43.* and 44. But a grant of a Mannor with a Hundred, or other Mannor in the premises of the Deed, is good, 8 *H. 7. 4. grants 42.*

V I I. By what Name a man shall take a Feoffment, and where he is misnamed in his proper name, and where without Name.

**A** Man pleaded a feoffment of the Mannor of *D.* and the Deed was of the Mannor of *S.* and void, as a feoffment to *I. S.* where the Deed is *T. S.* but good, where such a Deed is *I. D.* and he shall plead it according to his name, if he be known by the one or the other, or he may plead that he did enfeoff him by the name, 1 *H. 7. 29. Feoffments 30.* and that a man shall not have two names of Baptisme, see 9 *E. 3. Feoffments 74. 19 H. 4. 16 Feoffments 28.* and there it shall not be averred *per nomen*, if it be a Sir-name, 9 *Edw. 4. grants 23.* and there see a recovery by another name where it shall be averred *per nomen*.

A gift to an Abbot and Covent is good without more, so a gift to the Church of *D.* the parson hath fee, 11 *H. 4. Feoffments 42. 9 H. 4. acc.*

Land given to a man and his first son begotten, this is void to the son not born before, but if he be born, he shall take jointly, so a gift to a man and his first wife, 18 *E. 3. Feoffments 60.*

And a gift to the Son or wife of *J. S.* is good without any other name; there be such at the time, *M. 30. E. 3. Feoffments 64.* as a gift to the heirs of *J. S.* who is dead at the time, *11 E. 4. Age 25.*

*Mary* pleaded a Release to her by the name of *Mariot, Mowbray* conceived that she might plead that Deed, if she were known by the one name or the other, *Finchden*, contrary, but if it were confirmed by the name of *Mariot*, the same must be shewed. See the gift was to *I.* and *Mariot* his wife, so as there needed no name of Baptisme. *Quare 46 E. 3. 12.*

Land given to *W.* the Remainder to the Monks of the new foundation of the King, and because they had not a Prior at the time, the right is in the King, till the Prior be made, and then the Lessee shall have aid of the Prior, *32 E. 3. Aid 37.* and in ancient time a grant to such a Con-Monk did settle in the house, but a grant to two of the best men of such a company in *London*, who have not a Corporation, is void, and they of *London* cannot prescribe to make Corporations, *49 E. 3. Devis 7.*

A remainder in Tail to the heirs of *T.* and *S.* is a Joint-tenancy in them, if they be now heirs, and if to *A.* and to his heirs, and to *J.* this is a severall Right, *M. 38 E. 3. Formedon 18.*

And if two Parceners alien, reserving Rent, they are coparceners, and not Joint-tenants of the rent, *38 E. 3. 32.* but where the remainder is entailed to the Heirs of *J. S.* and *T. N.* if one hath issue a Son and dieth, and the other dieth, his Son shall not have any thing by *Finchden*, which *Thorp* denied, *30 Aff. 47.*

And if a Remainder be intailed to the next of the blood *puerorum* of *W.* and *W.* hath two Sons and a daughter, and the daughter hath issue at the time of the gift, and the Sons not, the issue of the daughter alone shall have the Land, although that the Sons have also issue before the remainder fall; but a remainder limited *haredibus puerorum*, shall be to all the issues born when it falls. *Quare* if one hath issue and dieth before the others have any issue, so as he is heir of *W.* and it seems to be all one, *30 Aff. 47. Devise 14.*

The remainder in tail to *T.* son of *J.* begotten of the body of *J. Candy*, good, without naming the wife; But in a Formedon she ought to put her name, *30 E. 3. 18. Feoffments 64.*

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VIII. Where a Feoffment by a Letter of Attourney shall be good, and where he doth not perform his authority, and of a Lease or Feoffment by Bailiff, Steward, Deputy &c.

If a man make a Letter of Attourney to enfeoff *T.* upon Condition and he deliver him Seisin without condition, the other may well plead, that,



## Feoffments and Leases.

that he did not enfeof him in manner and form, *M. 11. H. 4. 3. Feoffments 41.* See there, a Feoffment well made by Letter of Attorney for to deliver Seisin, without any deed of Feoffment.

Also the Livery upon condition is void, when the Letter of Attorney was to make it simple without condition, *12 Aff. 2.* But if the Letter of Attorney be simple, and by word the Feoffor command him to deliver Seisin upon Condition. *Quere*, if the same be Countermand, and it seems not, because he cannot have an authority without deed *&c. 26 Aff. 39. 35 Aff. 6. 38 Aff. 3.* of the countermand, *vide 34 H. 6. Administr. 3.*

A man makes a Feoffment in Fee, and a Letter of Attorney, to deliver Seisin, and before that done he becomes deaf and dumb, but his intent may be well gathered by signes, that he willeth that the Feoffment be made, for which, Livery was made afterwards, and it was adjudged good, *25 Aff. 4. Feoffments 84.*

*A.* made a Feoffment to *T.* with a Letter of Attorney to a stranger to make Livery of Seisin after the death of *A.* now Livery made in the life of *A.* is a Disseisin of him, although he agree to it afterwards, *46 Aff. 38. Feoffments 89.* *Wich* conceived that here *T.* was Tenant at Will, *&c.* as if he had entred by the Commandement of *A.* *18 H. 6. 16.* and Livery after the death of *A.* shall be void, *1 H. 7. 8.*

He who makes Livery by a command is a disseisor to him who hath Right Paramount, as if a Bailiff make Execution by a Warrant, he is a Disseisor to a stranger who hath Right, *10 E. 3. Affise 162.* but if *A.* disseise *B* to my use, and I command *C.* to take Seisin for me, Affise will lie against me, without naming him, *35 Aff. 2.*

It was said, that a Bailiff, Steward, nor the Commander of a Priory, could not make a Lease of the Freehold, but well they might by Copy of Court-roll, *M 19 E 3. Feoffments 68.*

A Feoffment and a Letter of Attorney to make Livery to *I.* afterwards the Feoffor doth race the name of *I.* and writes *A.* and sayes nothing, the Attorney makes Livery to *A.* and afterwards the Feoffor doth agree to it, this is good *&c. 35 Aff. 6. 26 Aff. 39.*

Livery made by Attorney after the death of the Feoffor is void, *1 H. 7. 8.* but a Deed delivered after the death of the Grantor shall be good, *M. 8. H. 6. 28.*

*I X. What shall be said a good Livery and Seisin, and when it needeth not, and when Livery is good within the view, and when not.*

**A** Feoffment to a woman at the Church doore, of Land within the View is good, *38 E. 3.* And  
If the Son do give back the Land to the Father in the Church, out of the

view, the Father being in possession, it is good, 41 E. 3: *Feoffments* 53.  
39 *Ass. Feoffments* 88.

If a man do deliver a Charter of Feoffment to me, being seised of the same Land, and prayeth me to deliver him Seisin of the Land, and I do deliver him back the Charter, without saying any thing, nothing passeth, but if I deliver it back expressly, in the name of Seisin of the Land, it shall passe, and so was it adjudged, P. 43. E. 3. *Feoffments* 51.

38 *Ass. 2. 39 Ass. 12. C. 9. part 137. 27 Ass. 61. 41 E. 3. 17. 6. 35 H. 6. Br. Feoffments* 174.

If a man deliver a Charter of feoffment upon the Land, *Quare*, if it do amount to a good Livery; But if he say, hold and enjoy this Land, according to the Deed, it is a good Livery, if he after deliver the Deed upon the Land he say, enter and enjoy, it is a good Livery. 36 *Eliz. Callard and Callard's Case* was this, *Standforth. Eastm.* reserving an estate to my self and my wife, I do give thee my Lands, it being upon the Lands adjudged it did amount to a Livery.

If the Disfeisor wave the possession, and the Disfeisee claimeth the same by sufficient words, or other matter, and the Disfeisor being upon the Land deliver a Deed of Feoffment of that to the Disfeisee, and he deliver it him back again in name of Seisin, this is a good Feoffment, by *Finchden*, 41 E. 3. 18. But if the Feoffor be not upon the Land, it seems the other hath but an estate at will by such delivery back of the Deed, 18 H. 6. 16.

A man lying sick, doth deliver to B. a Deed of Feoffment of the same house, and faith, *Habeas & teneas*, according to the form &c. this is *See Callard's Case before.* a good Feoffment, although he doth not go out of the house, but dieth there, 27 *Ass. 61 Feoffments* 85. this is if the Feoffor do not claim the Freehold afterwards, P. 11 E. 3. *Assise* 86. 11 *Ass. 43.*

## X. Where Feoffment by Duresse is void, and of non-sanae memoriae.

A Feoffment made by *Duresse*, is void, and an entry by such Feoffment is a Disfeisee to the Feoffor, 41 E. 3. 9. 9 H. 7. 25. *contra*, and if such a Feoffor at large, after do release, yet he shall have *Assise*, 15 E. 3. *Duresse* 14.

A man of *non sana memoria*, maketh a Feoffment, and takes back an estate for life, he is for so much remitted, 25 *Ass. 4. Feoffments* 44. *vide F. N. B. 103. and 35 Ass. 10.*



XI. Where a Feoffment by a Termor, or Tenant at Will, and the like, shall be said a Feoffment, and of what value, and where a man shall have a Freehold and Term together.

**I**F he who holdeth of me in Villeinage maketh a Feoffment to a stranger, this is a Disseisin to me, although it be good betwixt the parties, and it seems that he might make a Feoffment is no Plea against me, upon shewing the speciall matter, H. 14 E. 3. *Feoffments* 67.

Vide 23 H. 8. 7. and 25 H. 8. If one leaseth Land to 7. S. for years where he hath nothing in the Land, rendring Rent, the Lessee entrench and payeth his Rent; the Lessor is a Disseisor. *Quere* if the Lessee be not the sole Disseisor by his Entry.

21 E. 3. *Receipts* 131. If the Guardian assigne Dower where the wife is not dowable they are both Disseisors, as to the Infant. Vide 8 E. 3. *Assise* 149. 16 E. 3. 8 *Assise* 28. The Guardian of an Infant made a Feoffment, the heir brought Assise without other Entry.

If one enter and occupieth to my use, his Feoffment is a disseisin to me, 8 E. 3. *Assise* 149.

Two Coparceners alien by Deed, the one being an Infant, and in the Guard of the other, and also sealeth the Deed, yet this is holden a Disseisin to him by the other, 8 E. 2. *Assise* 394.

A Formedon upon a gift of Tenant for years, or for life, it shall be a good issue, that he was not seised of such estate whereof he might make a gift for him in the Reversion, but it was against every stranger, 18 E. 3. *Issue* 36.

Lessee for years makes a lease for life, Remainder for life or in Fee, if he in the Remainder enter, he is a Disseisor, 50 E. 3. 22. 43 E. 3. *Disseisin* 5.

Lessee for years or at Will, by his Feoffment was a Disseisor at the Common Law, 10 E. 3. and the Freehold is in them, 12 E. 4. 12.

The King, after that the Ward was of full age, and before Livery made a Feoffment to a stranger, the heir sued his Livery and avoided it, without having a *Scire facias &c.* T. 7. H. 4. *Liverie* 23.

If *Cestui que use*, occupie the Land at my Will, and makes a Lease in his name, this is a Disseisin. *Quere*, if I give power to my Lessee at Will to make a Lease, if the same be a Disseisin &c. M. 12 E. 4. 12.

If a Termor holdeth over his Term, and maketh a Feoffment, and if there be twenty Feoffees over, yet the Assise shall lie against the last Feoffee, 44 E. 3. *Attainder* 22. the Lord Furnisalls Case.

If Lessee for years leaseth for life, and the Lessee dieth, the Lessor or successor shall have *Terminum qui prateriit*, and the Reversion is in them, 7 E. 3. *Issue* 7.

A man makes a Lease for life, and if the Lessee dies within twenty years,

50 E. 4. 19. ac.  
22 R. 2. *Disseisin* 8. If the King alieneth my Land to one who entrench, he is a Disseisor, and by the Statute of H. 4. cap. 8. I shall have able damages, 20 R. 2. *Assise* 467. ac.

years, that his Executors shall hold over the Terme, this is good, 19 E. 3. Covenant 24.

**XIII.** Where a Feoffment shall be intended a Fee, where a Freehold on'y, and where made void for uncertainty.

*In a Case in vita* supposing a Feoffment to the Husband, and the Wife Plaintiff, it shall be intended a Fee simple, although it be not expressed, if the other doth not surmise the contrary, P. 8 E. 3. 24 Brief 448.

Lessee for life voucheth his Lessor, who doth him revouch, supposing that he did enfeof him, and took back an Estate for life, and good, without saying that he did enfeof him to him and his Heires, for that is intended, 17 E. 3. Voucher 152.

An Obligation is good which doth not expresse to whom he is bounden, if he acknowledge in the Deed that he oweth to T. & c. 2 E. 4. 22. So if he be paying to the Obligor, it is good, 4 E. 4. 31.

A Release which is, *Noverint, & c. me I. S. relaxasse, & c. omnimod. assumer, quas idem B. habet I. S.* is void for the non-certainty, otherwise is it of an Obligation, because that is severall, 14 E. 4. 2.

A Gift to T. and C. & *heredibus*, without saying (*suis*) is but a Freehold, although they have Warrant to them and their Heires, 19 H. 6. 73. 20 H. 6. 35. 22 H. 6. 5. otherwise it is of such a Devise, 20 H. 6. 38.

A Gift to T. *Remainder heredibus*, not (*suis*) is but a Freehold, 20 H. 6. 39. A Remainder limited to the Heires of T. is a good fee, without saying, And to their Heires, 20 H. 6. 39. 9 H. 6. ac.

**XIV.** Where a Feoffment by the Queen alone shall be good, and how, and where her Lease, or Action brought by her alone shall be good.

One by reason of a Feoffment of the Ancestor of the Queen, prayed in Aid of the King, and vouched the Queen, and good, also might have Aid first of the King, and afterwards of the Queen, if she were in Reversion, by Brian, who said, that the Queen shall do all things personally, as make Leases, Feoffments, and shall be bound during her life, 3 H. 7. 14. Aid of the King 32. And see a Lease of the Queen for life, H. 46. E. 3. Petition 20. And an Annuity granted by the Queen, M. 9 H. 6. Annuity 4. and 5.

And if the Queen lease for life, rendring Rent, the Lessee shall have Aid of the King, 9 E. 3. 42.

Vi. 10 E. 3. 27. b. 19 E. 3. *Quare Imp.* 146. The Wife of the King is as a feme sole, exempt from the King, and is of ability to grant or to present



sent to an Advowson. But in some cases she shall participate of the Prerogative of the King, and therefore *vi* 18 E. 3. 32 24 E. 3. 35. *Plainty by presentation is no bar against her.*

If the King confirmeth the Gift in tail of the Queen, the Donor shall have aide of him without words of Warranty, for the Gift of the Queen is as his Gift: And it was said, that the Queen Purchaser should hold as the Feoffor held, and of the same person, *M.* 9 E. 3. *Aide of the King* 80.

Annuity brought against the Queen, who granted an Annuity to be had *de quadam summa assignata* for her Dower, out of the great Customs of *L.* So where it was to be taken out of an Abby, 9 H. 6. 13. and 53.

**XV.** *Feoffment upon Condition, and where the Fee shall pass by Livery, and where by the Condition performed afterwards, and where it is upon Condition without speaking of it in the Livery made, and of Feoffment, Causa matrimonii prolocuti.*

**A** Deed was of Land to *T.* for twenty years, and that after the twenty years *T.* and his Heires should hold for ever by twenty pounds Rent; It was holden that if the Grantor within the Term dieth, the Wife shall have Dower, and his Heire shall be in ward, for the Freehold is in him untill it doth appear that the other agreeth to the Rent, &c. 31 E. 3. *Feoffments* 119.

The husband leaseth the Land of his wife for years, and in surety of the Terme makes a Confirmation in fee upon the Livery, he expresseth the intent, that he shall have but for the Term, yet he hath fee because the Condition is not expressed in the Deed, and it could not be found where a simple Confirmation was shewed. 17 *Aff.* 20. But if a Feoffment be, and Livery absolute, but speech that the meaning is upon Condition, it seemeth the same shall be well found; but if the speech be before the Lease for years, or if the speech be, that I you enfeoff in surety of the payment of twenty pounds, and after at another day a Feoffment is made, this is a simple Deed, although the Feoffor hath paid the money to the Feoffee, yet it seems he shall not enter, for it was enquired if such speech was at the time of the Livery, 34 *Aff.* 1. *Aff.* 311.

A Feoffment *Causa matrimonii prolocuti*, shall be averred such, although that an absolute Deed be thereof afterwards made; but if the Speech be of a Feoffment with a Remainder, and an absolute Deed be made and Livery upon it, the same is no Remainder, 34 *Aff.* 1. 12 E. 1. *Feoffments* 114. *vi* 8 E. 2. *Entry* 78. *vi* 4. *Mar. Dyer* 146.

A woman made a Feoffment *Causa matrimonii* to *B.* who married her after she died, her Heire did recover, and in a *Mortdancer* for against the Husband, 13 E. 1. *Feoffments* 113.

A woman made a Feoffment to T. being married, *Causa matrimonii*, by expresse Condition, and after the death of T. she well entred for the Condition broken, 41 *Aff.* 13. Condition 17.

*Causa matrimonii* well maintained by the husband and wife against T. it appeareth that the wife cannot now marry him, but because the Charter was absolute, and it appeared that she had received forty pound of him for the land, she could not have the averment, &c. 8 E. 2. *Cur.* 18. *Fitz. N. B.* 215. *ac. vi.* 41 E. 3. 6. and 19. 4. *Ma. Dyer*, where that in an expresse consideration in a Deed, another shall not be averred, but if a Deed be absolute, and no consideration is expressed, a consideration out of the Deed may be averred, *C. Lit.* 204. *ac.*

Where a man giveth land to a woman, *Causa matrimonii*, and after wards marieth her, the Gift thereby is not defeated, *M. 5 E. 2. Cui in vi.* 114. and if he will not marry her, he shall not have *Matrimonii prolo-* *mi.* *F. N. B.* 205. *F.* But it seems that Writ doth not lye upon a Gift in *tail.* *12 part* 74. *ac.*

For years, upon Condition that he shall have Fee if he be disturbed being disturbed, he had an Assise without re-entry, 10 E. 3. *Affise* 101. *vi.* 6. *R. 2. Quid juris clamat* 20. 12 E. 3. *Voucher* 265. *Lit.* 81. *sett.* 350.

A feoffment, upon Condition that if he hold the land peaceably fifteen years, the Estate shall be void, and within the term the Feoffor grants the Reversion to a stranger by fine, the Tenant attorneth, this is good, *quoniam* 45 *Aff.* 10. See the Feoffment was in surety of the term of fifteen years: And the opinion was against the Grantee of the Reversion, because the Tenant after the attornment, & within the term, was put out.

**XVI. Where a Feoffment of Lands seised into the Kings hands shall be good.**

If the Heire be in Ward of the King, intrudeth upon the possession of the King, and levyeth a Fine, it is void; but a fine levied by him with intrusion, is good to bind him and his Heires, 11 H. 7. 5. *Finis* 26. *vi.* 13. *R. 2.* by *Hank*, that by a Feoffment after intrusion nothing passeth.

So of a Feoffment of Land, seised for primer Seisin, or for Alienation without license. And *Fromike* conceives that the Seisure of the King, of Lands of a Prior Alien, or for a Fine for Alienation, shall avoid every Feoffment of them made without his license, and upon general license to alien such lands, he shall not alien untill the Kings hands be removed. But a Feoffment of a man outlawed in a personall Action is good, and the King shall not have the profits afterwards, other- *wise* 101. *vi.* 6. *R. 2. 21 H. 7. 7. 13 Aff.* 59 *H. 6* 20. *ac.*

If the Heire entreth after Office found of a Tenure for the King before he is fined, and dieth, his Wife shall not have Dower: Otherwise it is



of an Entry before Office, 4 H:7.1. Dower 18. And there Fitz. saith, That the Feoffment of the Husband in the last case is good, and shall not be defeated by the Office after found, but it is not so in the book at large.

Schard conceives, if it be found by Office, that he who hath but for life, died seised in fee, and held of the King, here he in the Reversion might well make a Feoffment of the Land during the possession of the King, because the King hath not cause to seise upon the matter: Otherwise it is where Livery ought to be. But where an *Ouster le main* shall be, a Feoffment shall be good after that in Chancery, before a Writ of discharge shall be to the Escheator, yet before that the King shall have the profits, because the *Ouster le main* is to no person certain, 10 E:3.3. Aff. fise 256.

If Lessee for life upon Condition commit Felony, and after Exigent before the King hath seised, the Lessor entreth for the Condition broken, the same is good, otherwise if the King had seised: But some thought that for the Condition broken after the Exigent, that he could not enter, 27 Aff. 50. And that after Seisure he shall not enter, 5 E:4.4. vi. 3 E. 4. 27.

Vi. 4. E. 4. 23. If it be found by Office that the Kings Tenant is seised of such lands: if another hath rent out of the land, if he grant the same over, the Grantee shall not have the Rent, but by Petition to the King. So if a Condition be broken, the land being in the possession of the King, there can be no entry for it upon the King: And see 4 E:4.23, what land is forfeited to the King, he shall hold it discharged.

#### XVII. How the form of pleading of a Feoffment shall be, and of the pleading of a Feoffment made by Cestui que use.

See 35 H:6.63. of a Feoffment, he shall say, In his Demefne as of Fee, and of a Lease for life, as of Freehold.

He who pleads a Feoffment of *Cestui que use* in Bar, may well plead generally that he entered, and did him enfeof, if it be void by the Statute, as that he was within age, imprisoned, &c. the other ought to acknowledge that, T. 6 H. 7. 6. Verdict 15.

And Schard conceives that the Statute of the King, of lands of a Prior Alien, or for a Fine for Alienation, shall void every Feoffment of an made without his licence, and upon licence to alien such lands, he shall not alien until the King be removed. But a Feoffment of a man outlawed in a personal Action, and the King shall not have the profits afterwards, otherwise not. And if a Feoffment of a Tenant for the King before Office found of a Tenant for the King, and die, his Wife shall not have Dower: Otherwise it is

# FEOFFMENTS, AND RESERVATIONS.

I. Where a Reservation of a Rent by Deed Poll upon a Feoffment shall be good, and where it is not good without Deed, and of Advowson.

**N**ote by *Needham* and *Littleton*, that a Rent shall be well reserved upon a feoffment by Deed Poll, for by the exceptance of the Livery the feoffee hath agreed unto the Condition, &c.

8 E: 4. 8. *Feoffments* 14. *Danby* contrary.

Although the Deed of feoffment or confirmation by which the Rent is reserved be indented, and the one seal one part, and the other the other, yet if the feoffor speaketh all in the first person, it is his Deed onely, and the feoffee shall not be bounden, and the Reservation void by *Danby*, and so was the opinion of the Court; but if it be, This Deed witnesseth, &c. it shall bind both parties; 35 H. 6. 33. *Estoppel* 88.

A Woman who recovered Dower, granted all her Estate, and made Livery upon the land, rendring Rent without Deed, P: 45 E: 3. *Scire facis* 92.

*Danby* in a manner agreeth, that a Reservation of Rent upon a feoffment by Deed Poll shall be good, with these words, *In cujus rei Testimonium pradiit*. the feoffee hath put to his Seal: And upon a Gift in tail, it shall be also good without Deed, 8 E: 4. 8. *Feoffments* 24.

*Cestui que use* entreth and Leaseth, rendring Rent, this is a void Reservation, if he have not a Deed of it: As a Reservation now upon a feoffment in fee, for the Reservation is in the feoffees, 5 H: 7. 5. *Feoffments* 33.

It was holden P: 21 Jac: in the Exchequer Chamber by all the Justices in the Lord *Sheffrid* and *Ratliff's* case, That if *Cestui que use* makes a lease for life or years, that he convey no Reversion: And upon such Lease:



## Feoffments and Reservations.

Lease reserving Rent, the Reservation is void, unlesse it be by Deed indented, *vi. 21 H. 7. 25 8 H. 7. 8. 27 H. 8. 13. ac.*

A feoffment of a Mannor reserving one acre, and Advowson appendant, it is good without Deed, as it seems, for the Advowson doth remain appendant to the acre, *5 E. 3. 66. Livery 7.*

11. *Where a Reservation may be of part of the thing granted, or of part of that which passeth by the Feoffment, and where reservation shall be of the whole.*

**B**Y a generall Lease of Woods, all passeth, but the Lessor may well reserve the great Wood by such a Lease by word, *22 E. 3. 8. Feoffments 36.*

A man giveth all his Tenements in *D.* except one Chamber where himself lyeth, the same is good, *11 E. 3. Ass. 86.*

Note, if a man hold of me by Fealty and Rent, and I do release him all my right in the land, saving the Rent, I shall have the Fealty also, because it is incident to a Rent-service, and the Rent is saved such as it was before, *11 E. 4. 11. Release 16.* So if I grant the Rent in that case, saving the Seigniorie. But if he holdeth by Homage also, then the Grantee shall have but a Rent seck by the grant of the Rent, saving the Seigniorie, *29 Ass. 20. Grants 76.*

*C. 2. part in the Lord Cromwells Case, ac. 9 E. 3. 1. ac.* A man may enter into a Warranty, saving to himself his Rent, or Wards, *2 E. 2. Voucher 108.* and so was it adjudged in *Tusser and Bradburies case, 23 E. 1.* if the saving be by Indenture.

A man grants *totam partem piscariae suae*, from *D.* to *C. Salvo stagno molendini*; by this Reservation the fishing in the Pool is not reserved, because he may have other profits of the Pool, and there are no expresse words of it, but if the Grant had been *Prater stagnum molendini mei.*

*Skipston* saith expressely, that the Grantee should not intermeddle there. Also he might have reserved parcell of the Fishing by expresse words: As parcell of his land severall upon a Grant of Common in all his Lands. But *Wich* said, If upon such Grant he had said, *Salva Piscaria mea*, it should have been void, because contrary to the Grant, *34 Ass. 11. Ass. 316.*

A man granted unto a Prior by fine a Parsonage, saving to him and his Heirs, the Presentation to the Vicaridge, from Vicar to Vicar for ever, it was a good fine and good Reservation, *M. 1 H. 3. Grants 89.*

A man gives a Mannor, saving to him and his heirs, one acre and the Advowson appendant, the same is good, *31 E. 3. 66. Livery 7.*

III. Where Reservation of the profits of the thing granted shalbe good, what things may be reserved, and where the Reservation shalbe void.

The Lord confirms the Estate of his Tenant, saving ancient demesne, with Rent and service; nothing shall pass of the Services, 33 H. 6.

*Ehappell 97.*

If I enfeof one of the Mannor of D. saving two acres, through which I used alwayes to carry and bring my goods from the demesne Lands. *Hi*", in a manner agreed, That the Feoffor should have that way, because my self had it as a profit of a Mannor &c. T. 20 E. 3. *Admeasurement* 8.

Profits of a mill assigned for dower, 45 Ed. 3. *Dower* 50. also gifts in tale, and Formedons of them, 16 E. 3. *Eormedon* 29.

A man giveth Lands to an Abbot, Prior, and Covent, *Ita quod Prior & conventus habeant omnes exitus &c. absque hoc, quod Abbas, &c. aliquid suscipiant solva pralacia sua ratione concessionis predict*, and good, but yet the Assise shall be against the Abbot alone, 14 H. 4. 10. *Non-ability*

21.

Common granted for a Way upon an agreement without Deed, 15 E. 2. *prescription* 51.

If a man makes a Lease upon condition that the lessee shall not take the profits, this is a void condition, 6 R. 2. *Quid juris &c.* 20. so it seems of such reservation 38 H. 6. 38. *acc.*

A Rent well reserved upon a gift in Frank-almoigne, and so of Frank-marriage, 13 H. 4. *Mesne* 74: See a gift in Frank-marriage with his daughter *Habendum sibi & heredibus suis vel cuicunque assignare voluerit reddendo 12 d.* and a good Frank-marriage, and the land shall revert to the Donor after their deaths, without issue, notwithstanding the Assignment of the husband after the death of the wife without issue, 13 E. 1. *Formedon* 63:

See 4 H. 6. 22: by *Martin*, Where a man gives land with his Daughter in Frank-Marriage rendring Rent, the Reservation is void, because it is contrary to the tenure, which is to be quit and free, till the fourth degree be past, 26 Ass. 66: by *Richell acc.* and so in that adjudged, in *Webb and Potericafe* 25 *Elix. in B: R.*

A man gave land to the Priorels of D. by Deed, *Dedi &c. omnia terras & tenementa absq; homagio & fidelitate habendi & tenendi de me & heredibus meis, reddendo inde mihi annuatim 10 s. tantum pro homagio, & fidelitate, & pro omnibus que exigi poter. salvo tamen scutagio Domini Regis, quando currit*, and the party by this Deed claimed Frank-almoigne, but the Deed did not prove that, but it was holden by *Brown and Muisford* that against that Deed, the Feoffor nor his Assignes should not avow for homage yet escuage is reserved, which drawes to it homage, T. 19 E. 2. *A. Man* 7, 224.



Aman granted an Advowson in fee, reserving ten marks of Rent, which he took before by the hands of the Parson, 29 E. 3: *Aff*: 361. so a man granted the parsonage saving the vicaridge, 2 H. 3: *grants* 89:

*Quare* this case, For 44 E. 3: 45 C. 5: part *Edwards* case, C. 5: part 4: The Lord *Mountjoys* case, a rent cannot be reserved but out of things incorporeal, and not out of things incorporeall, as an Advowson is, But 14 E. 3: *Scire facias* 122: The King may issue a Rent out of a Faire which is incorporeall, and so out of a Rent.

IV. *Where Reservation ought to be only to him who makes the Estate, and where to one of them, and where it may be to a stranger.*

**A** Sise of Rent by a woman, It was found that her husband did lease the Land to the Defendant, reserving rent to him and the said woman his wife, for their lives, and that he was seised of the Rent, and dyed &c. *Berry*, Because it appeareth no gift of the Defendant to the wife, &c. but the husband reserved &c. and he could not give to his wife, the wife by award took nothing, 13 E. 2: *Feoffments* 108.

*Vi. Littl* 80. *Doctor and Student*, 94. It is a Maxime in Law, that a Rent properly as a Rent, cannot be reserved to a stranger, *Vi. 21 H. 7. 22.* by *Frowick*, A distresse cannot be given to a stranger to a Lease, 49 E. 3. 15. A man gave land in taile, reserving rent to him and his wife, it was void as to the wife.

*N.* acknowledged, &c. the right of *E.* wife of *R.* *Comen*, &c. and for that *R.* and *E.* did render unto *N.* for the life of *H.* and his heirs, and not received, without giving the husband also some estate in the reservation of the reversion, because he was party to the render, 16 *Edw.* 3. *Fines* 3. &c. upon such fine to the husband and wife who render for life, he could not reserve the reversion to them and to the heirs of the husband, where upon examination, it appeared that shee had a joynt estate with the husband in the fee before, because nothing is devested but the Freehold, nor the Reversion cannot be reserved to the heirs of both by fine. But *Trem* said, That the reversion might be to them and to the heirs of the wife, because the husband that he had fee before, 8 *Edw.* 3. *Fines* 87.

*W.* levied a fine to *J.* as those, *Que I.* and *A.* his wife had &c. the rendring of the land to him in taile, *Tenend*: of the cheif Lord, and *Reddend*: to the husband during his life, twenty pounds with diverse remainders over, each to hold and render to the husband as before, and good, without reserving any thing to the wife, if she had not any estate before. But *Shard* said, That such Rent charge could not be good by way of reservation, namely to charge the issue in taile, for which came the

the fine was levied without the reservation, 9 E.3.6. *Fines* 89.

A. enfeoffed C. in fee, rendring to him and B. 40 s. per annum, with clause of distress, and A. and B. brought an Assise of the same, which was challenged; because that B. had not any thing in the land, &c. *Ber-*  
7. If we should award the title sufficient, you should be attainted of dis-  
cussin, without taking the Assise. *Stons concessit*, and the Assise was ta-  
ken by assent of the parties, 18 E.2. *Assise* 381.

Land is given to husband and wife in speciall taile, the remainder to  
the right heirs of the husband, who dyeth without issue, the wife took  
to husband one R. and they by Indenture did lease the Land to T. who  
was right heir of the first husband for the life of R. rendring rent, and  
and re-entry for not payment &c. he paid the rent, and afterwards en-  
feoffed N. in fee, and for the rent behind in the time of N. they entred,  
and being put out, did recover in Assise, upon this matter found, and that  
for the rent behind, for there was no forfeiture, because he who made  
the Feoffment had the reversion, and their lease to him was no surrender,  
for he was concluded of that by the Indenture, which did affirm the  
reversion in them. Also the Reversion shall not be said to the husband by  
the lease made for his life, for that is not expressed in the Deed, and the  
wife was remitted by the entry, 29 *Assise* 64. *Assise* 292.

Husband and wife, and three seised in fee, lease the land to a stranger,  
reserving to them and to the heirs of the three, and afterwards all of them  
brought waite against the Tenant, as Joynt tenants of the fee, and well,  
for the recovery is void in a manner, by *Schard and Wilby*, because the  
Eigne right shall not be so devested, and the deed shall be no estoppel to  
husband and wife, to claim their reversion; for a man may well avoid his  
deed made, although not his fine, by *Wilby*, 14 *Edw.3. Brief* 282.

See 38 E.3.8. That such reservation shall be good by intendment, that  
he had fee before, *Vi* 38 H.6.24. 2 R 3. acc.

Note, If the King leaseth lands by his Letters Patents, rendring rent  
to a stranger, the same is good, and the stranger shall distrain for the  
same, and shall have debt after the lease determined, &c. *M.35 H. 6.36*  
*Prerogative* 5.

V. Reservation by the word (*Salvo*) &c. where it shall be of  
the Ancient Rent, and where of new &c. reserved by that  
Deed and by the words, *Reddendo, Faciendo, Reser-*  
*vando, &c.*

*D. Ashy* saith, That this word (*Salvo*) cannot make a new rent,  
but shall save that which was before, 35 H.6.13. *Estoppel* 701 and  
A man grants a Piscary, &c. *Salvo stagno molendini*, which was with-  
in



in the precinct, &c. the soil and liberty to use for the amending of the mill &c. is saved, and not the fishing there, and so no parcell of the thing granted, if the thing do not pass by the grant, for by that word, parcell of the thing granted is alwayes reserved: But *Preter stagnum*, shall take away all priviledge of the grantee in it, 34 Aff 11. Aff 316.

Lord and Tenant by fealty and Rent, the Lord doth release his right in the Land, saving the Rent, he shall have the fealty also, 12 E. 4. 12. 13 E. 3. 46.

If he which held by Knights service make a feoffment in fee to hold by 2 d. that is to say, *Pro omnibus servitijs, salvo forinseco servitio*, before the Statute, yet the feoffee shall hold by Knights service, agreed, The Feoffee, *Pro homagio suo*, shall hold by homage during the life of the Feoffor only, but the heirs of the feoffee shall never do homage. *Schard* said, That by exception a man cannot reserve any other thing, which was not comprised before in the grant, 8 E. 3. 67. *Avowry* 154.

Feoffment to hold by twopence *Pro omnibus &c. faciendum. Capitali domino servicia debita &c.* he shall hold as the feoffor, but shall not do corporall service, and he shall take advantage of a Release which is possible, 49 E. 3. 10. *Account* 44.

Fine of a Mannor except the third part, and that also granted by way of Remainder, 16 E. 3. *Fine* 4.

A man gave lands *Tenend. libere & quiete, faciend. forinsecum servitium*, and because it was not expressed *Faciend. forinsecum servitium capitali Domino*, It was adjudged that he should hold of the Feoffor, 13 H. 3. *Guard* 152.

And by this, viz. *Salvo forinseco servitio*, nothing is saved but according to that which is charged over, and not according to that which his Lord paramount is charged with over, 26 Aff. 66 *Grants* 75. See there the judgment contrary. *Choke* saith, If the Lord releaseth all his right to his Tenant rendring 2 d. this is void, but if it be so hold by 2 d. or reserving 2 d. this is good, because it appeareth to be parcell of the Ancient service, and he shall have fealty: Also he saith, That a Feoffment at this day to hold by 12 d. is void, because it doth suppose a Tenure, but rendring or reserving 2 d. is good, and *Piget* saith, That Confirmation of the Lord to his Tenant *Reddendo* 2 d. is good, because by recitall is a Tenure supposed, and this is parcell of the same Rent, 21 E. 4. and 22 E. 4. *Serv. facias* 52.

If the Lord maketh a feoffment of parcell of his Mannor doing suit to his Mannor, this is suit-service, for which hee may distrain, 9 Aff. 176. *Avowry* 176.

A man leaseth land for life, *Dummodo solvat*, to the Lessor for his life 10 l. he hath a free-hold in this Rent, 3 E. 3. 15. *Assise* 172.

A man granted a Reversion by Fine in taile to hold of him, doing him for his life, 20 l. after the services done, &c. 17 Edw. 2. *Excep.* 112.

If *A.* held of *S.* before the Statute by Fealty only, and he enfeoffeth *L.* giving to him 10 s rent, this is void, because it was not before, by *Willelm.* and *Green*, 26 *Affise* 66, *Grants* 75. And there *Thorpe* saith, that nothing shall be reserved in a gift in frank-marriage by the word *Salvo*, because this is but implication, which shall not take away the priviledge given before, but may well be by the words, *Reddendo*, or *Faciendo*, &c.

## VI. Reservation of Rent upon a Fine, where it shall be good.

Upon a Fine *Sur consens de droit come ceo*, &c. a Rent shall not be reserved,; so of a Fine upon Release, because these are executed, and the Consee in possession, but upon a fine executory, as a fine upon Render, a Rent may well be reserved, *H.5. R.2. Fine* 1. vi. 39 *E.3. 1.* and 46 *E.3. Fine* 43. against the Reservation, *T. 2 E.2. Fines* 11. 7 *Edm.3. 17. Fines* 83.

A reversion well saved to him, who renders by Fine, 16 *E.3. Fine* 3. but not to him who acknowledgeth a Fine, *come ceo*, &c. 1 *Edm.3.5.* and 6.

*A.* releaseth to *B* by fine, and for that *B* grants to him a rent of 8 s. with clause of distress, and it was received, 39 *E.3. 1. Fine* 32.

The husband and wife grant and render a Mannor by fine for life rendering the first year a penny, and the six next a rose, and afterwards a hundred pounds per an. with re-entry, and this is refused, but might be received with clause of distress, 44 *E.3. 22. Fines* 36.

*Fi. 27 H.3. 24.* A fine levied upon a grant and render upon a Condition, 43 *H.6. 52.*

Husband and wife Tenant of the life of the wife of her land, he in the reversion, grants and renders to the husband for life, &c. 44 *Edm.3. Fine* 37.

A rent reserved upon a Fine of grant and render, release levied by the husband and wife Tenant for the life of the wife, 18 *E.3. 25. fines* 81 29 *E.3. 28. fines* 7 8. acc.

*Curia* saith, If the Lord by fine reciting the services certain; releaseth to the Tenant his right, reserving parcell of the services, the same is good, and shall not be a new service, &c. 22 *E.4. Scire facias* 52. vi 39 *E.3. 1. Def. vi 2 H.3. 5.*

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VII. Where



## Feoffments and Reservations.

V II. Where a Reservation shall be of a Lesser Estate then he had before, and where the Estate shall be changed by it, and where it is contrary to the Estate.

**H**ankeford saith for Law, That a man cannot reserve unto him a lesser estate then he had before, as taile after the Statute of *Donis*, but upon such reservation, he hath fee as the taile was after issue had before the Statute, and there *Thorne* and *Hankeford* doubted of taile reserved by fine, 14 H. 4. 13. *Monstrans* 131, an Estate reserved to the Feoffor, is Fee by *Berry*, 29 *Affise* 17.

*H* and *M.* his wife Conusees, did render the Conusors for life to hold of them and the heirs of *H.* begotten on the body of *M.* and that after his death, *Omnia prædicta terra &c.* should remain to *H.* & *heribus suis prædictis*, the remainder to the right heirs of *H.* and the right heirs brought a *Scire facias* &c. and the Writ was abated, because the fee was executed in *H.* and the tail void. Also the Writ was *Remanere*, where it should be *Revertere* 2 H 5 8 *Scire facias* 57 *vi* the book.

A man gave lands in taile, the remainder to himself for life, the remainder to a stranger in fee, and although the remainder to himself was void (yet *Herle* put a difference, where the remainder is over in fee, or not) yet the remainder to the estranger should not be voided thereby, 7 E 3 19 *Formedon* 73.

A man cannot give to himself a lesser estate by reservation, for then he should give him an estate which he had not &c, &c: 42 E 3 5 and 11 *feoffments* 96:

*N* held of *T* in soccage, he of the King in cheif, *N* gave the land to hold by 2 d *Salvo forinseco servitio*, adjudged that the Donee should hold by Knights service, the reason *Wilby* gives, because he is but a forren Lord, *S* the King 26 *Aff*, 66. *Grants* 75:

But the Lord may well disagree to the Feoffment of his Tenant to him and another, the Livery being to the other, and that for his ancient Interest in the Land 10 E. 4. 13 and such feoffees, the Lord did disclaim in the Chancery in a *Subpæna*, for the cause aforesaid, 16 E. 4. 4 and 5: but goods given to me are in me, untill I do disagree in a Court of record, 7 E 4 8 *Sir Robert Oxenseilds and Knivets case*, 16 E. 4. 4. & 5.

V III. Where more or lesse passeth, and of the Letter of Attorney exceeded, and not pursued.

**I**F a man maketh a Deed of two acres, and livery is made of four acres *Secundum formam chartæ*, the four Acres shall pass by the Chart by *Danby*

# Feoffments and Reservations.

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*Dunby, Neeham and Piggot*, and that by the livery only: *Piggot*, If the Deed be of a Mannor, or of a house, and such Livery of thirty acres, the Acres pass by the Deed: *Choke*, this is where two acres are known by the name of foure, or the thirty acres by the name of the Mannor, *M 7 E 4* *feoffments 23.*

If the Charter be of fee, and the livery upon it but for life, this is a fee simple, *13 E 3. estoppel 177.*

A Charter is generall, *Habendum* for years, and livery is made upon it, yet nothing shall passe but for years, *19 E 3* *tail 1.*

## IX. Where a Feoffment or Gift shall be good without speaking of heirs or Successors.

A Grant to the Mayor and Commonalty during their lives, is not determinable, by *Brian 22 E. 4. Feoffments 29.*

A gift to an Abbot and Covent, is fee without more, so of a gift, *ecclesia de D. T. 11 H. 4. feoffments 42. 16 H. 4. Feoffments 100.*

The Father enfeoffeth the son, and afterwards the Son declares in the Church, that he is contented that the Father shall have the land back again as fully as he gave it him, the inheritance shall pass without more words, *39 Aff. 12. Feoffments 88.*

A grant to the Monks of *D.* without speaking of Successors, is a good fee, *32 E. 3. acc.*

## X. Where a Feoffment made by a Dean, or Mayor shall be void, where good.

Note, A Lease or a feoffment made by the Mayor solely: or by the Dean solely, is void; so if it be made by the whole body, if he have not a deed of it, *22 Ed. 4. Feoffments 29: 4 H. 7: 17.* But *Townsend* saith, That a Corporation may have a Servant, and necessary Officer without deed, *Feoffments 32.*

Treple: the Defendant justifies as servant to the Mayor and Commonalty, and good, without shewing a Deed, the same not being of a thing which doth vest or devert the Freehold, *7 H. 7: 16. Monstrans 115:*

## XI Where

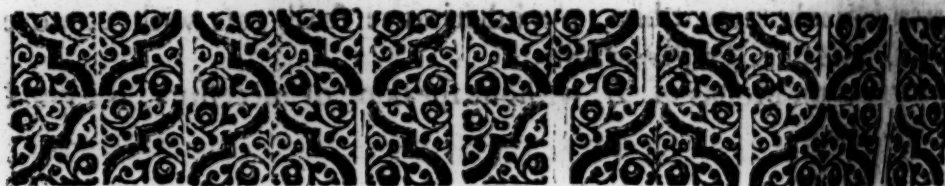


XI. *Where a Feoffment of Cestui que use shal be good, and the manner of it, and where the Feoffee shall make a Feoffment or a gift, and binde the Land to Execution.*

**I**f *Cestui que use* in taile make a feoffment in fee, this is good, and shall bind him and the feoffee during his life, but after his decease, the issue in taile may enter, *M:4 H:7:18.*

If *Cestui que use* make a gift in taile, the reversion is to the feoffees, so of a Lease for life, and they shall have waft without attornment, and reservation of rent is void without a Deed, because the feoffees or strangers and *Cestui que use* hath not the reversion, but if *Cestui que use* make a Feoffment in fee upon condition & it is broken, he shall re-enter, and retain, and the Feoffees shall have nothing, *5 H:7:5.*

Tenant by Statute Merchant, and by *Elegit* shall be aided by the Statute of *Richard* the third, of Uses for it is as a Lease, and the Statute hath relation to a statute Merchant, where a Lease was made before the Statute made, and the entry of the Lessee shall be maintained after, although he were ousted before the Statute, *7 H:7:6 vi. 14 H:7:14.*



# W A R D S.

I. *Where the King shall have the Ward by reason of Lands, to which the heir hath right of Entry, and Title, and where the King may oust the Feoffee, and reseise the Lands after Liwry.*

**H**E who holdeth lands in taile of the King purchaseth his licence to alien with Warranty, and to take back an estate in speciall taile, the Remainder to his right heirs. Now after his death his heir being within age, and the ward of the King, he made a feoffment with Warranty and dyed, his heir within age and Ward of the King, the wife had taken the profits, and after the death of the husband his heir shall have

have a *Scire facias* against the wife, and shall charge her with the profits of the two parts after the death of her husband, notwithstanding she is widow of the King hath made Fine for her lands, and notwithstanding the licence, for the King was deceived in that, and the third she shall retain for her Dower, yet it was said, that she should forfeit it, because she was party to the Feoffment, &c. 40 Ass 36. Gard 1.

It was found by Office, that C. did alien by licence, and took back an estate to himself for life, the Remainder to his Son and his wife &c. they have livery as purchasers, and afterwards upon a Fine found in the Exchequer, that he was Tenant in Tail, the Reversion to the King, it was holden that the King shall have the Ward, because the Husband was yet within age; but at full age, that he might well deraign the warranty against the feoffees of the Father &c. 21 E. 3. Livery 32.

Vide C. 1 part in the Case of Alton woods. 41 Ass. 15. 40. Ass. 36. adjudge that the licence was void, and shall not enure to make the grant good during the life of Tenant in Tail.

Note, if it be found by Office, that if an Infant who is in Ward of the King, hath title to enter into land as heir, for a Condition broken, the King may well seise that land in the Right of the Infant, the Case was, that the King did license his Tenant to enfeoff two men, upon Condition that they should give back the land to him in Tail, the Remainder to a stranger in fee, he would not take it back, but by fine, and depending that died, and the feoffment upon Condition was found in the Office, and the Ward seised for other lands, and a *Scire facias* against the two, and it was said, that the Tail was destroyed, because the license determined by the death, and the heir shall be restored in fee, 19 E. 3. *Entrie congelata*. 39 Gard 114.

Note, if the Kings Tenant leaseth for life by licence, and dieth, his heir within age in Ward for the Reversion, and the lessee alieneth in fee, the King may seise the land in the right of the Heir &c. 19 E. 3. Gard 113.

Vide C. 7. part in the Earl of Bedfords Case acc. the King in the Right of the Heir shall avoid mean estates after Office found, C. 8. part, *Tower of London Case acc.*

The King and every Lord shall have the wardship of the Heir of his Tenant, upon whom there was a Disseisin in his life, and an entrie in his Right, 48 E. 3. 8.

And the Donor shall have the Wardship of the heir of the discontinuance of Tenant in Tail, 48 E. 3. 8. 20 H. 6. 10. *Avowry* 21. But if my very Tenant alieneth and dieth before notice, yet I shall have the Wardship of his heir, because it is of the heir of the Disseisor. 2 E. 4. 6.

A man enfeoffeth two upon Condition, that after his death they shall enfeoff his heir, if he hath an Heir, and if not, that they should make a Chappell, and it was found that he had a daughter within age, sh. shall be



be in Ward, but the Feoffees may well traverse the Office, as that the feoffment was absolute, and without condition, 42 *Ass. 6 Traverses* 24.

### I. Ravishment of Ward brought by the King.

**A** Ravishment of Ward brought by the King was awarded good: So it seems he shall have what Action he pleaseth, 47 *E. 3 Guard* 30 because transitory, but he shall not have an ejectment of Ward, because that is locall, 1 *H. 7. 19.*

A Ravishment of Ward by the King, the Defendant said, that the ancestor did enfeoff him, without that, that he died the Kings Tenant, and for Title to the body, said that the Ancestor held other land of him by Knights service &c. and note, I may well retake my ward, who is seized by the Escheator without any Right, and without Office found for the King, 14 *H. 4 15. Guards* 84.

*II. Where a man shall have the Ward by priority, and what is priority, and where Issuable, and where the Lord by posteriority shall have the body.*

**H**E who purchaseth the seigniory by priority, shall have the advantages *per Curiam*, M. 2 *E. 4. Guards* 2. *Temp. E. 1. Guards* 134. *adjudges acc.* It is a good Plea in a Writ of Right of Ward of the body, to maintain priority, to say, that he held of T. whose Estate he hath by an elder feoffment &c. *Anno 3. E. 3. Gards* 19. Or that he held of him, and those whose Estate he hath before he held of the other, and those whose Estates he hath, 13 *E. 3. Guards* 39.

Issue shall not be upon the priority, but where the Tenancy is confessed according to the Declaration, and therefore if the Defendant doth confesse parcell holden of the Plaintiff in Knights service, and parcell of himself in Socage, and saith, that so much is holden of him by Knights service, by an ancients feoffment, the Plaintiff shall generally maintain his declaration(s) that all is holden of him &c. for if he shall answer to the priority, the Count shall abate &c. 6 *E. 3. 48. Guard* 16. 18 *E. 3. 29 & 37.*

In a Ravishment of Ward it is a good plea, to say, that he holdeth of him by an elder feoffment, without saying, of whose feoffment, 11 *H. 6. 16. Guards* 52. 10 *H. 6. 19.*

Issue was taken upon priority by assent of the parties, 10 *H. 3. Guard* 150 and 16 *H. 3. Guard* 144. 17. 31. *Gards* 146. A Writ sent to inquire after Issue joyned.

He which holdeth one moiety of T. the other of S. doth enfeoff

of the whole land, to hold of the chief Lords, now S. or T. he who first gets him shall have the Wardship of the body of the heir of the feoffee, *M. 2. E. 3. 57 Gards 26.*

If a man holdeth two severall Mannors of two severall Lords, and at one day makes two severall demises of them by Fine, and taketh back one Mannor to himself and his wife for life, the remainder to his Son, and the other to him for life, the remainder to the same Son, the wife dieth, the husband dieth, the son at one day entreth into both, and dieth, his heir within age, now he which first happeneth it, shall have the Wardship of the body, but it is said, that if the wife had overlived, that Mannor of which she had an estate shall be holden by posterioritie, if the heir hath entered in the other Mannor living the wife, but then the other party ought to shew that *33 E. 3. Gards 162.* although it was awarded, that that Lord shall have the Wardship of the body of whom the Tenant held most Land, without having regard to the priority, but there appeared no priority, so it was holden as an equall feoffment, *8 H. 3. Gards 139.*

The Queen doth purchase a Seigniorie by priority, and surrenders the same to the King, who grants it back to her for life, she shall have the Wardship by priority, *24 E. 3. Gards 27. 5 E. 3. Prerogative 20* agrees of the grantee of the Queen over. And so *Green* thinks *24 E. 3.* although the King had granted the remainder over in Fee, and although that the Seigniorie was by reason of an honour, and not by reason of the Crown, *See Fitz. N. 3. 142.* contrary in the point.

Every priority is extinct by the purchase of the King, although he dismisse himself afterwards of it, by the opinion of *24 E. 3. 21. Gards 46.* *De Hill* saith, that the grantee of the King of the Seigniorie, shall not have the same advantage of priority &c, which the Court granted, *14 H. 4. Gards 86. 12 E. 3. Prerogative 23.*

But the Committee or the grantee of the ward shall have the Kings Prerogative, because he remains Guardian, and the other hath not the Seigniorie, and therefore the Grantee of the King shall have it, because of Ward, although that he holdeth of another Lord by priority, *12 H. 4. 18. and 15 Gards 81.* See of that *Stamford cap. 2.*

The Lord by posteriority brings a Writ of Ward against the Mother, &c. and hanging the Writ the Lord by priority grants to her the Ward, he may plead that in Bar, *21 E. 3. Gards 36.* also it shall be a good plea for the Heir, in a Writ of *Maritagio foris facto*, by the Lord by posteriority, to say, that he hath agreed with the Lord by priority, and the Plaintiff shall not take issue that he held of the other by priority, but the same shall be, if he holdeth of the Plaintiff by priority, or by equall feoffment, and that he first seised him, or that he doth not hold of the Plaintiff, *44 E. 3. 15. Bar 201.*

In a Writ of Ward, the Defendant said, that the Ancestor held of M. who holdeth of the Defendant, and that the Ancestor held of M. by an equall feoffment then of the Plaintiff, and that the ancestor brought a



writ of Mesne against *M.* and did forejudge him, and attended to no intermediate. *Schard*, The Lord shall have the same service of the Tenant, as he shall have of the Mesne, be it greater or lesser, which the Tenant did before to the Mesne: So all the change is in the Tenancy, and that shall change the priority. *Parr.* The Statute speaks of priority of feoffment, and here the Tenant continueth his estate &c. *Schard*, you shall be helped by plea by the Statute, *Hill 14. E. 3. Guards 37.* and it was said, that by such forejudger, the Tenant shall hold of him by priority, of whom hee held by posteriority, although that the Lord Paramount shall have the same Service now of the Tenant, by *Schard*, which he had before of the Mesne, *H. 33. E. 3. Guards 12.* also *Schard* agrees that the change is in the Tenancy, because he is in the place of the Mesne, and because the Lord which was by posteriority shall have the priority, and not the Lord of the Mesne, because he hath not the estate of the Mesne, and because he cannot say, that the Tenant holdeth of him, and whose whole estate he hath by Eigne Feoffment &c.

But *Quare*, if the Mesne had held before of the Lord by priority, as the Tenant did of him, if that priority doth remain, *11 E. 3. Guards 15.*

In a Writ of Ward, the Tenant doth disclaim, and saith, that one *R.* hath another Writ depending against him, and he is ready to answer to whom the Court shall &c. and because the Infant was married in his possession, he lost the value by award, and the Plaintiff did enterplead, and *R.* said, that the ancestor held of him by an ancients Feoffment &c. *7 E. 3. Guards 121.*

And the Defendant shall answer the value of the marriage being found, that he held of the Plaintiff by priority, if married &c. *21 E. 3. Judgment 150.*

*Ingleby* said, that if the Tenant was disseised of the Land holden by priority, for which the Lord by posteriority seised the Wardship of the body, and afterwards the Heir doth recover, or entreth &c. the Lord by priority shall have the Wardship of the body, *quia cessat causa.* I deny you that &c. *H. 33. E. 3. Guards 162.*

III. Ejectment of Ward, where it shall be of Land and of the body, where of the Land onely, and where it shall be brought against the Heir himself, where of Land and Rent.

Ejectment of Ward of the Land, and of the body was assigned to *Good*, *2 E. 2. Gard 4.*

*Fitzh. N. B. 139 b. acc.* But see *22 Eliz. Dyer 369. G. 10* in part 45. *B.* that Ejectment doth not lie of the body and Land, therefore the Judgement was given, and damages for the Land onely.

And that is by the Common Law, and not made void by the Statute, which gives another Writ for the body, 3 E: 3. *Guards* 18. The opinion of *Masford* seems contrary of the body, because he cannot be ejected of 13 E: 3. *Guard* 7. and 14 E: 3. *Breif* 316. such Writ was abated, because it supposed also an Ejectment of the Heir, &c.

Assignment of the Ward of the land and body, and the Defendant pleaded joint tenancy with him who died seised, 2 E: 4. 27. *Guards* 62. so admitted the Writ.

In Ejectment the Defendant said, that he himself was Heir, so he ought to have a writ of Intrusion, for which the writ abated, 32 E: 3. *breif* 347.

Ejectment lieth against me upon an Ejectment made by my Servant by my commandment, or without my commandment, if I take the profits: But if A. do eject me, and B. doth eject him, I shall not have Ejectment against B. 38 A: 9. 38 E: 3. 18. *Guards* 89.

11 H: 4. 10. If two eject me to the use of one of them, I shall have Ejectment against them both, and if one dieth the Writ shall not abate.

Ejectment of Guard of land, the Defendant said, that the Ancestor did not hold the land of the Plaintiff, and the plea was not allowed, 5 E: 3. 21. *Guard* 28.

12 H: 4. 10. by *Hankford* Non-tenure is no plea in Ejectment of Ward, but he shall answer to the Trespass.

Ejectment of Ward brought, supposing that he held land and rent; It was said, that the Mesne held the land not the rent, and that there could not be an Ejectment of a rent, and that a writ of Escheat, or *Cessavit* shall never suppose a rent to be holden, &c. and yet the Defendant passed it over, and traversed the Tenure, 13 E: 3. *Guards* 38. But a writ of Ward, supposing that he held land, and rent was awarded good, 22 E: 3. 10. *Guard* 42. And the writ of Ward of a Rent alone, awarded good, where the Ancestor had made a Lease for life, saving the reversion and rent, 19 E: 3. 40. vi. 8. E: 4. 20. But he shall count that he held the land by 10 H: 6. 12.

13 E: 3. *Ejections Custodia* 9. Ejectment doth lye of a rent without possession or seisin, for there is a possession in Law, and the rent cannot be received till the rent day.

#### IV. Where one shall be in Ward, living his Father.

Writ of Ward of the body of 1. the heir of *Mawde*, the Defendant said, that he is Tenant by the curtesie of the same land, and the Issue is his Son and Heir apparant, and that he is seised of other land which he holdeth of another by Priority, and the Plaintiff could not therefore the Writ did abate, 2 E: 2. *Guard* 2. And to such by the Curtesie one may be in Ward in the life time of his Father, 13 E: 3. 40. vi. 8.



See 29 H:8. Dyer 8. and F:N:B:143. If a man be Tenant by the Curtesie of the Tenancy, the Heir shall not be in Ward during the life of the Tenant by the Curtesie.

But being his Heire apparent he shall not be in Ward, although the land of his Mother be descended after her death, so as the Father cannot be Tenant by the Curtesie: but the land shall be in Ward, 33 H:6. 35. but see F:N:B:143. that the Heir apparant of the Tenant by the Curtesie shall not be in Ward, although he hath no land to descend to such Son.

If land doth descend to the son which is holden of the father by Knight Service, *quare* if the father shall be Guardian, by reason of his Seignory, or Guardian by Curtesie. *vi. Plow. Com. C. 6. part 22. Lit. 25.* The father shall have the wardship of his son and heir apparant, *jure naturo*, and shall not forfeit the same by Outlawry, 31 E. 3. *Guard* 154. *18 E. 3. 25.*

See that the Mother who hath no land shall have the Custody of her Son for Nurture.

V. Where Guardian in Socage shall have a Writ of right of Ward, where Ravishment, and where Ejectment of Ward.

**R**avishment of Ward is not given by the Statute *de heredibus masculis*, &c. to Guardian in Socage, but by *West. 2. cap. 24. Quod nullus recedat a cancellaria sine remedio*, &c. T. E. 1. *Gards* 133. *ac.* And the Writ which saies *legitimam aetatem*, doth not expresse what age is good, 3 E. 2. *Gards* 6. but see F:N:B:139. that this Writ is given by equity of the Statute of *de heredibus masculis*, and therewith agreeth old N:89.

Ravishment by Guardian in Socage, *Quare, vi. & armis rapuit ab uxore, & maritavit, ad damna*, &c. and found damages, and that he was unmarried, and recovered damages, 1 E. 3. *Gards* 29. *vi. 7 H:4. 29.*

It is no plea for the Defendant that he hath nothing but in the right of his wife. Also Guardian in Socage may sell the Wardship of the land and of the body without Deed. *Quare* this, and he may devise it, and the Devisee need not shew the Will, 26 E. 3. 65. *Gards* 159.

Also that a Writ is depending in the Kings Bench, is no plea, yet he may have the body here. Also for Guardian in Socage, the Writ *Capias ita quod habeas corpus hic*, &c. 9 E. 4. 15. *Gards* 66.

Ravishment of Ward, the usage of the Town was pleaded, that when an Infant could measure an Ell of Cloath, he is of full age to be married, and that he is now of twelve years, &c. but because he was Guardian in Socage, he shall answer to the Heir the value of his marriage, and the Defendant that he had not made Title, the same is no bar, 119 E. 3. *Gards* 127.

Ravishment by the Grantee of the Guardian in Socage, is no bar, that that Grant was upon Condition, and because it was made, the Grantor did release, and granted unto him, and that the Defendant was in aide of him at the release, 22 E. 3. *Gards* 163.

Guardian in Socage shall have a Writ of right of Ward and shall

to his damage, and the Lord shall not have him although upon procla<sup>2</sup> mation made in his Court, the next of kindred do not challenge the Wardship, 27 E. 3. 79. *Guards* 22. against 22 R. 2. *Guards* 106. But against this *per Curiam* 13 H. 3. *Guards* 141. of the Writ, see F. N. B. 139. H. his opinion that he shall not have a Writ of right of Ward, because he shall account: But see the Register, such Writ is for him.

Ejectment of a Ward lieth for Guardian in Socage, without shewing of whom he holdeth, vi. 13 H. 4. 17. *Guards* 82. and see there, it is no plea, that he did not dye Tenant in T. of whom the Writ supposeth that he held, for that is not the matter, but he shall answer, if he died seised. And it is holden there, that Guardian in Socage shall present unto a Church which is void, &c. 29 E. 3. *presentment* 17. But the Law is now holden that he shall not have the presentment, because he cannot account for i, but the Heir himself, if he be not in the Wardship of any other, as in the Wardship of the King for other Lands, &c. P. 8 E. 2 *presentment* 10 27 E. 3 *Prerogative* 19. C. Lit. 89. a. 31 E. 3. T. *Estoppel ac. F. N. B.* 139. H. ac. 27 E. 3. 5.

Guardian in Socage may forfeit the Guardianship, because he may do a thing to the disinherifin of the VVard, 12 E. 3. *Guards* 151.

Guardian in Socage, shall have a VVard, by reason of VVardship, as of him who holdeth of the Infaut who is in Ward, as his next of kindred, N. B. 139. H.

VI. Where the next of kin of the part of the Father, or of the Mother shall have the Wardship of the body, or he which can first get it.

If the Mother be Guardian in Socage, her Husband dead, and she take another Husband, and to him deviseth the VVardship, yet the next of kin may seise the body of the VVard, and may grant it over, as it seems by the book, 19 E. 2. *Guards* 126.

But it is agreed that a Gift, or Sale, or Devise of the land and body by Guardian in Socage, is good, and he need not say that it was to the profit of the Heire, 16 E. 3. *Guards* 159. And there the Devisee of the Mother pleaded the same against the next of kin after her death, and the other did maintain his Seisin, without that, that the Mother did give it.

In VVard to parell, the Defendant claimes next of kin of the blood of the Father, because the land did discend from the Mother, and to the rest of the land in Socage, where he had made proclamation in his Court for the next of kin, &c. and the Plaintiff being present made no claim, yet as to that part the Plaintiff did recover, and he shall account to the Heir for the time before: And he claimed the body, because of the blood of the Father. But the opinion of the book seems to be, that which of them could first get it, should have it, 27 E. 3. 79. *Guards* 22. and *Antiquities* 271.

In Ravishment by the Lord in Socage, where the Defendant claimeth by



by the Gift of the next of kin : It seems no plea for the Plaintiff that he was seised untill, &c. without that, that the next of kin gave, &c. but he ought to make himself a Title, as Guardian in Knights-service, or other wife, &c. 33 E:3 *Guards* 161.

Land holden in Socage is given in Frank-marriage, the Donee dieth, the next of kin, on the part of the Mother, to whom the land cannot descend, shall have the VVardship, 17 E:3 *Guards* 146.

A VVrit of VVard against the Lord in Socage by the Aunt, on the part of the Mother : The Defendant saith, that the Mother of the Infant is alive, and more neer &c. It is a good plea for the Plaintiff there that the Mother made a Deed in disinherisin of the Infant, and thereof was attainted, so as she had forfeited her property in the VVard ; and so was the opinion of the Court, 31 E.1. *Guards* 157.

VII. *Where Resummons shall be against the Heire, or Executors of all the Defendants, or any of them in a Writ of VVard, and where against the Heire, or Executors of the Plaintiff, and what pleas they shall plead.*

**I**N a VVrit of VVard against W. R. and S. upon default at the Grand Distresse, proclamation issued : And the Sheriff did return W. dead, pendant the VVrit, and the VVrit served against R. and S. who appeared not, the Plaintiff had a Resummons against S. Heir of W. & Judgment was stayed against R. and S. at the day, G. came by his Guardian : And the Plaintiff did declare against them all, and G. had not his age : And the Plaintiff recovered the VVard against them all upon the Proclamations ; but the Court would advise whether the Infant should render damages, 9 E:3.15. *Guards* 15. *F.N.B.* 143. And it was adjudged by Wilby, that Resummons doth not lye against the Heire, if the Executors have Assets, &c. (1) to the value of the marriage, according to the Statute, and the Heire may well alledge that without disclaiming the possession of the VVard : But the VVrit against him needs not suppose that the Executors have no Assets : And the Plaintiff said, that the Executors had not any thing at the day of the Resummons : It was said, that he should say, they had not any thing the day of the death : *Quare* afterwards the Heir waved the plea, and said, as to the body, that the Ancestor had not any thing, and as to the Land, that the Ancestor of the Infant doth not hold of the Plaintiff, which is an answer to both, and if the Defendant be found Tenant of the body, although it be found that the Ancestor of the Infant did not hold of the Plaintiff, yet he shall recover ; it seems to be no plea for the Heir that he himself is not Tenant, &c. And Resummons doth not lye against him for the possession, if the Executors have sufficient, &c. *H:18 E:3.4. Guards* 110.

A VVrit of Right by *L.* and upon her death her Heir sued a Resummons against the Defendant, and after her death against three Executors, who said, that the Ancestor held of *A.* who held of the King, and that he was seised of *R.* Son of *A.* and our Testator seised of the Heir, of which the VVrit is brought, &c. in the right of the King, and demanded Judgment of the VVrit: And it was holden that they should not have that plea to the VVrit, because the Testator had the same plea before to the Action, for which they were at issue, if fully administred: And *Sonte, ex abrupto* awarded, that the Plaintiff should recover the VVard presently, as he shall do at the Proclamation before the Inquest taken of the damages, *P. 29 E. 3. 26. Guards 45.*

Resummons against two women Heirs of the Defendant in an Ejectment of VVard, who saith, that the Ancestor of the Infant did enfeof them, and found against them, and the Plaintiff did recover, *30 E. 3. Judgment 143.*

It is conceived, that the Executors of the Plaintiff Guardian in Right cannot sue a Resummons of the Action commenced by the Testator, *11 H. 4. 53. 48 E. 3. 20.* agreeth: VVhere the Testator brought a Ravishment of VVard of the right of his wife: but the Statute is, that the Executors shall have a Resummons where the Testator was Guardian in fact, and not the Lord, *West. 2. cap. 35. 9 H. 4. Executors 52.*

If the Lord in Right doth not seise, it seems the Executors shall not have the VVard, whether he dye after the Action brought or before, *quer. 11 H. 4. 53. 6 H. 4. 2.*

*VIII. Where the Husband and VVife shall have the VVard joynly, or in the right of the wife.*

A Woman possessed of a VVard taketh a Husband and dieth, he shall have the ward, *30 E. 3. 6. Guards 35.*

And a Ravishment, or Ejectment of VVard will lye against the Husband, without naming of the wife in such case, *26 E. 3. 65. Guards 159.*

But in a writ of Right of ward against the Husband, it is a good plea to the writ, that *T.* gave him to him, and his wife not named, &c. for she shall have him after the death of the Husband, *2 E. 3. 15. Guards 17.*

But upon such Grant of the King upon Seisure of the ward, which upon Office found ought to have remained with *T.* his Father, Tenant by the Curtesie, he shall have a *Scire facias* against the Husband, without naming his wife, *46 E. 3. breif 618.* and the wife shall have the ward after the death of the Husband, if he doth not alien it, *14 H. 4. 25.* and they may joyn or sever in a Ravishment, or Ejectment of Ward *ibid.* because it is a Chancell reall, *quod nota.*

But in a writ of right of ward, they ought to joyn, because Voucher lyeth: Also it doth not appear by that if they were possessed before: but if



if the husband bring ravishment of Ward, and recovereth, where it was the right of his wife and dyeth before execution, his executors shall sue forth execution, but if he dye before judgment, the wife shall recover the Ward in a new action, 48 E. 3. 20.

IX. *The Count in a Writ of Ward, and the forme of it.*

**A** Writ of Ward of P. Son of R. he declared, that he was seised of the Services, by the hand of R. as by the hand &c. without saying in the time of year, &c. or that hee was seised of the homage and fealty of &c. But in a *Cessavit*, *Escheat* &c. where the land in demean is demanded, he ought to count all in certainty, 3 E 3 *Gwards* 19.

He who declares in a ravishment of Ward, need not shew how hee cometh to the Ward, and every matter to the Writ affirmed by pleading to the action, and shall not be alledged for error afterwards; 29 *Ass.* 31 *Gwards* 23.

Tenant in Dower shall have a Writ of Ward, and shall declare upon her case, but Tenant by the curtesie may well declare generally, that he dyed in his homage, and awarded good, but *Schard* said, Answer, and let it be a warning to those that declare afterwards, 13 E. 3. *Gards* 39.

Ravishment of Ward by Tenant in Dower, she declared that he held of her by, &c. and that he dyed in her fealty, and good against a Ravisher without saying of whose assignment shee held. 22 E. 3. 19 *Gard* 44.

A Writ of Ward of escheat of a Rent is good, but then the Count must be of land &c. 11 H. 4. 81.

The Declaration was, that the Father held the Land, and the land layed in the Grandfather, yet all was good; 22 E. 3. *Gards* 43. but where he claimes the infant as heir of his Father, it shall be a good plea, that the Grandfather was seised, and survived the father, without that, that the Father had any thing &c. and it shall be a good plea to abate the writ, yet it was sayd, that it was but an argument that the father did not dye in his homage, 20 H. 6. 30. *Gards* 56. and such plea shall be good to the Writ without making title in a Ravishment of Ward; but if he plead it in bar to the action, he ought to make title, 14 H. 4. 16 *Gards* 85. See 7 H. 4. 2. *Gards* 75. a speciall taile survived to the wife, if the Defendant had not the Plea, without making title:

In a Ravishment of Ward, as heir of the Father, where the elder brother surviveth, shall abate the writ, 9 H. 4. 3. *Gards* 74. and that was pretended to the writ without making title, 19 E. 3. *Gards* 112.

Note, The reason of the book is, for that he ought to suppose himself heir to his brother, and not to the Father, *Per Curiam*.

The Writ was, *Custodia terre, & heredis*, and the declaration of land and rent, and well, although the Writ did not make mention of the rent *quare* 22 E. 3. 10; *Gards* 42: Ravishment

Ravishment of Ward, the Plaintiff declared, that *I*. mother of the Infant held ten acres, the Defendant sayd, that *M*. Mother of *I* was seised took to husband *T*: had issue *J*. *M*. dyed, *T* Tenant by the Curtesie overlived *I*. by which it was holden, that the Infant shal be supposed the heir of *M* 18 E 3 25, and see there, That the plea, that *T* holdeth the whole is a good plea to the Writ; but by the concluding in bar, the advantage of it was past.

Ravishment, supposing that *W*: held of him, and that he was seised, by her hand, whose estate, *T* Father of the infant had, it is a good Declaration, without alleadging, in fact, that *T* was his Tenant, or that he was seised by his hand, or he might have alleadged *T*. his tenant, and leveried the seisin by the hand of *W*: 14 H: 6: 17: ga ds 54: 22 Edw: 3: gards

Ejectment by guardian in soccage, he doth not expresse of whom he holdeth, nor doth expresse that hee is of full age, yet all good, 26 H 6 gards 36:

Ravishment of ward, the Plaintiff counted, that he was yet within age, 37 H 6 7 gards 60:

Ravishment of *C* son of *T*: and declared, that *S* held of *T* in Knights service; and hee over of the Plaintiff and dyed, his heir within age, and good, for if he holdeth the land, it shall be supposed that hee holdeth the domain: The Defendant said, that *S*. held of another, 8 E 4 20 gards 63 10 H 6 12:

A man shall not have a writ of ward by reason of severall Tenures, although the Ancestor held both of him, & therefore he was driven to put one Tenure out of his Declaration, 17 H 6 gards 117 but 46 E 3 Breif 619 it is holden, that a ward of land, (s) of two Mannors, holden by severall tenures, and the Declaration according was good, otherwise where the body is demanded. And if I have two Mannors holden by severall services, and before the statute I enfeof a stranger of two acres, the one of one of the Mannors, and the other of the other, to hold both by Escheage, I shall have one Writ of ward of both lands, so of a gift in taile at this day, H 17 E 3 13 gards 107

It is not materiall to which of the Donees the issue in speciall taile be made heir in a ravishment of ward, because it is as Trespas, and the Seignory not traversable, 41 E 3 15 gards 94 and H 45 E 3 gards 99 he shall not shew how cosin &c:

In a ravishment of ward, the Plaintiff was driven to mend his Declaration, because it was *Vi & armis*, &c: 7 H 4 9 gards 77 but contrary to this 1 E 3 20 gards 29:

A writ of ward of land, and the heir, the Plaintiff declared of a Mannor and twenty acres, and those being parcell of the Mannor, he did abridge it to them, because the writ is generall of Land, and the heir, 39 E 3 10 gards 91.

A writ of ward, he declared, that he held the Mannor of *B* which now



is made into a Priory &c: and good without supposing that he held the Advowson of the Priorie, the Defendant said, that it had been a Priory time out of mind, so he ought to have supposed the Advowson to be holden, for which &c. 42 E: 3. 7 *Guards* 96:

*Vide* 6. E. 2. 10  
49 E. 3. 27.  
33 H. 6. 11.  
11 H. 6. 55:

A writ of ward by two sisters, and declared that the Lord gave in Tail to 7: their mother who had issue them two, and one A: who had released to them, without shewing that their father Tenant by the curtesy was dead, because the same was to the Action but the opinion was that all was naught by naming of A: in their declaration, who was not in the writ, because they might have declared generally without naming her, also it was holden that they could not plead the Release against a stranger without shewing of it, but against the parcener her self who released, they might &c 45 E 3 10 *Guards* 100.

A writ of Ward against four at the first grand Distresse, one made default, and three did appear, the Plaintiff declared that they did deforce him of three parts of the Land, and of the body. *Belknap*, he ought to declare according to the Writ, or to stay untill they all appear, or untill the fourth hath lost by default, and the Wardship of the Land is as intire as the body. *Perey* contrary, for if one plaintiff be nonsuit, the other shall declare, of the moiety of the land, 45 E. 3 10 *acc.* but after day was given *prece partium*, at which day the three did appear, and a grand Distresse with Proclamations returned against the other who did not appear, and now the Plaintiff may aver his Writ &c. and the others took upon them the whole Tenancy 49 E 3 19 *Guards* 104.

A Writ of Ward by a Bishop, supposing that the Ancestor held of him, where he died in the time of his Predecessor, or in the vacation of the Bishoprick, the writ shall abate upon such challenge, 40 E 3 *Brief* 520.

It seems by the opinion of this Book, with which agrees F N B 143 e. 2 E 4 19 that if a Bishop have Title to hath Ward, and doth not seise him, but dieth, that the successor shall have the Ward, and may seise him, but see 40 E: 3 14 *contr.* See C: *Lit:* 9 10 *Elix:* *Dyer* 277: the Executors of the Bishop shall have the Ward, because it was a thing vested, but if a Church do void in the life of the Bishop, and the Bishop dieth, the King shall present, and not the executors of the Bishop, because it is a thing onely in action, F N B 33 & 34 *acc:* *vide* 50 E: 3 26 *acc.*

A writ of ward upon a gift to H: in Frank-marriage with the sister of the Donor, H: had issue S: who had F: who had 7: and 7: had by one woman R: and after by another T: 7: aliened, and took back an estate to him and his second wife in speciall Tail, and died, T. had Issue G. with in age, and claimed the ward, because the four degrees were past, and the gift was in Frank-marriage, *Habendum* to them and to the Heirs of their two bodies, yet the Declaration of Frank-marriage was good, also the Declaration was conceived good, although the Heir who is demanded, is not Heir to the Frank-marriage, but to the estate Tail late taken back, &c.

for it was holden, that the Seigniorie was not gone from the Donor, by the alienation of the Tenant in Frank-marriage: And it was holden, that the Discontinuance held of the Donor, and that the Declaration was good, although that the Frank-marriage were gone by the discontinuance, *P. 31 31 E. 3: Gards 116.*

In a writ of Ward, the plaintiff set forth in the writ, that the Defendant held by Escuage, but in his Declaration he spake onely of Homage, it was said, he should take nothing, although he did alledge divers seigniors of the Ward &c: it was but encroachment, when the tenure whereof he declareth is but Socage, but Castle-guard is Knights-service, and he who holdeth by Grand Serjeanty, holdeth also by Escuage, *M: 19 R: 2 Gards 165:*

It is sufficient to say, that he died in his Homage, without laying of Seisin of the Services in himself, or any of his ancestors, *E: 1. Gards 132.*

X. Which shall be said a sufficient Bar in a writ of Ward.

**R**esummons for the Heir against the Executors of the other, they said, that the heir was of full age at the death of the Testator, and that they have fully administred, the day of the Writ brought, and at issue upon that, and the Plaintiff did recover, *24 E. 3. Gards 45.*

In a writ of Ravishment, the Defendant said, that the Infant was with him by composition, and that the Plaintiff had married the Infant before, it was a good plea without making Title, *20 E. 3 Gards 41.* But it is no Plea that the Ancestor did not hold of the plaintiff without making Title to himself; for that plea shall be onely for the heir himself, *19 E. 3. Gards 127.* But it was holden a good Issue, that the ancestor did not die the Plaintiffs Tenant, *9 H. 6. 10. Issue 54.*

Ravishment *de filio & hered.* good, without saying in *Custodia*, otherwise in a Writ of Right &c. the defendant said, that the ancestor did enfeoff him, without that, that he had any thing after &c. It is no plea, without traversing the tenure, also he did not make Title to the body, *9 H. 6. 1. Gards 52. Fitzh. N. B. 140. 141. Finchden* saith, if the Plaintiff hath possession, the other shall be punished in this action, whether it were by Right or wrong, if he cannot make Title to himself, and without Title the Tenure is not traversable, *43 E. 3. 4. 14 H. 4. 15. Gards 84. 2 H. 4. 14. Gards 72. 9 H. 6. 10. acc.* Because it is in the personalty, and damages onely to be recovered, and the Tenure traversable without making Title.

Ravishment of the Heir of *T.* Feoffee of *R.* if the Defendant alledge joint-tenancy with *T.* he ought to traverse the Feoffment onely, or the sole dying seised, when he doth not plead it to the writ, but in bar, *14 H. 6. 17. Gards 54. contrary, and 2 E. 4. Gards 62.* that he needeth not traverse



verse, or plead joint-tenancy in himself with the Ancestor &c.

Ravishment of the Heir of *H.* upon the grant of *N.* the Defendant saith, that *M.* seised holdeth of *N.* and took to husband *H.* and had issue the Heir, *H.* died, *N.* granted the Ward to the Plaintiff, *M.* died, and *N.* granted to us &c. and he ought to traverse the sole Tenure of *H.* but need not speak of the first grant, 37 *H.6.31.*

It is a good colour in a Ravishment of Ward, that *B.* of whom the ancestor held, did grant him to him, and afterwards *T.* of whom the ancestor with the Defendant held other Land, supposing that he had died sole seised, took him, and granted him to the Plaintiff, and that we did retake him, 2 *E. 4.27. Gard 72.*

Ravishment by the Lord of the Ward of the Mesne, (s) the heir of *T.* supposing the Tenure of five Acres; the Defendant said, that *T.* was seised of the five acres, and held them of *H.* in Socage, as of his Mannor of *D.* which *H.* held the said Mannor over of the Plaintiff by Knights-service, and leased the same to *T.* and *A.* his wife, the Remainder in Tail, the Remainder in Fee to *T.* who died, and that *A.* was in by survivour as Guardian in *Nouriture* &c. and that he as Servant of *A.* took the Infant from the plaintiff, and good, without traverse, because he confessed the five acres by one Mesne holden of the plaintiff, because the Mannor of which &c. for the Lord may distrain in them, also how he held the five acres, and no more he ought to traverse, for the quantity is not materiall, as to having of the Ward. But in Avowry or *Cessavit*, and also in an intrusion of marriage by *Coke*, he ought to traverse the quantity for the mischief of estoppel, but this which the plaintiff declareth, that *T.* held, and the Defendant shewed, that he and his wife leased, he ought to traverse the sole Tenure of *T.* and so he did, and it was said, as the Case is, *T.* shall not do homage in the life of *A.* so he may well traverse the dying seised in his homage, afterwards the plaintiff did maintain his Declaration of the Tenure of *T.* without that that, *C.* held the Lands of *H.* as of his Mannor, in manner and form &c. *M.8.E.4.20. Guards 63.*

Ravishment by the King, as to the land, the defendant pleaded feoffment of the ancestor, without that, that he died his Tenant, and as to the body, made title, as Lord of other Land, and it was holden, that upon a seizure without Office, that I may well take the heir out of the possession of any, 14 *H.4.15. Guards 84.* or I may have an *Oust. le main cum exitibus*, 7 *E.4.18.*

A woman being my ward doth assure her self to another, notwithstanding which I may well grant her marriage over to another, and in Ravishment of Ward against the Husband, if hee plead this matter, that after the grant he married her, and that she was of the age of 16 years, it seems a good plea; and therefore they were at Issue, upon the age 43: *E.3:9. Guards 97* but note the Grantee of the King shall recover, although she were of that age, viz: of the age of 16 5 *E.4.10.*

It is no plea in a ravishment of Ward, that he is not heir, or that he is a Bastard, by *Finchden*, 41 *E.3.15. Guards 96:*

Ravishment by the Grantee of Guardian in Socage, the Defendant said, *Vide 3 R. 1.* that he delivered the Ward to the Plaintiff upon condition, that he should *Guards 166. It* do waite, and for doing that he came &c. and we did assist him, and *is a good bar in* they were at issue upon the Bailment in the manner &c. 33 E. 3. *Ravishment of*  
*Ward of body*  
*and Land, that*  
*the ancestor de-*  
*parted with the*  
*Land, and did*  
*not die seised,*  
*and of the body*  
*that the defen-*  
*dant claimeth*  
*the same by the*  
*Custom of Or-*  
*phanage of*  
*London.*

A writ of ward, of 20 s. Rent, the defendant said that the ancestor held the Land out of which &c. and leased the same for life rendring Rent, and granted to him for life the Rent, with the Reversion, and holden a good Plea, 19 E. 3. *Guard 40.*

A writ of ward of the body of the heir of 7. the Defendant did alledge the Land given to 7. and A. his wife, and to the heirs of 7. who is dead, A. being alive whose estate he hath, and it was holden a good plea in bar, 28 E. 3. 93. *Guard 23.*

A Writ of Ward of the body and Land, it is no Plea, that the ancestor did enfeof 7. whose estate he hath, without traversing the dying seised: yet the plaintiff did admit it, but to alledge a Fine to T. whose estate he hath, is good without traverse, 4 H. 6. 29. *Guard 51. 12 H. 4. 16. Guards 80.* because a dying seised after a Fine levied is not materiall.

The entrie of the heir in Religion, is a good bar in a Writ of Ward for the body, and so it seems for the Land; as if he were alledged dead, 13 R. 2. *Guard 106.*

The Lord claimed the Wardship of him who was in his mothers belly, and shall have it, and he shall be called Guardian in a writ of Dower brought against him, *temp. E. 1 Guard. 153.*

Note if a man *Non compos mentis* doth make a Feoffment, and a Letter of Attourney to deliver Seisin, yet he shall be adjudged to die Tenant to the Lord, 7 H. 4. 5. *Guards 67.* but the Lord did alledge further, that after his death the friends of the Infant did enter upon him, so he died his Tenant, *Markham*, if the heir of an Infant enter upon his Alienee, I shall have the ward: So here, *Hanck* and *Thirn* said, that the Guardian cannot try the Right of the Freehold (s) the validity of the Feoffment, as a Termor may do by the Statute, 7 H. 4. 12. *Guards 78.* but see before, that he shall have the generall averment, that he died his Tenant.

*Vide 47 E. 3. 16.* It is a good plea generally in a writ of ward, that the ancestor doth not hold of the Plaintiff, or that the ancestor did not die seised, without any more, and the speciall matter, as Feoffment by Collusion &c if there be any such, shall come on the plaintiffs part to plead.

*Vide F. N. B. 143. 11 H. 7. 12. 12 H. 7. 20. 6 H. 4. 4.* If an Infant sue for a condition upon a feoffment made by his ancestor, he shall be in ward for that Land, 1 H. 7. 9. 7 H. 7. 11. 26 H. 8. 3. 9 E. 4. by *Danby.*

It is no bar against a next of kin, that he as Lord in Socage, made Proclamation, and none would challenge the Infant, although that he do alledge that the Plaintiff was present, 27 E. 3. 79. *Guards 22.*

The Committee hath a ward by reason of Wardship fallen in his time, and



and grants it over, his grantee shall have aid of the King, because the King remains guardian, 12 H 4 19 *Gards* 81.

In a writ of ward, the Defendant said, that the Ancestor of the Plaintiff did levy a fine of the Land to him, and that he did render the same in taile to hold of him &c. the Plaintiff could not aver the Tenure generally, for which cause he did alledge the release of the Defendant to the Ancestor; it is no plea for the Defendant that he did not release &c. but he may well plead that he continued seised of the land by the fine, without that, that he did release &c. 38 E 3 7 *gards* 87.

It was sayd, That the Feoffment of the Ancestor is no plea without Deed, see 4 E 2 *gards* 119.

In a writ of Ward of the body and Land, the Plaintiff declared of his possession; Nontenure of both is a good plea, 15 H. 3. *Gards* 143. But 20 H 6. 12. that he ought to say, the day of the writ brought, not ever after. But it is no plea in a Writ of Ravishment of ward, 12 H. 4. 11 nor in an Ejectment of Ward, 41 E 3 15 Nor that he doth not hold of the Plaintiff, no plea in an Ejectment 5 Ed 3 21 But 19 E 2 *gards* 125 the Defendant said that the Ancestor held of him without that, that he held of the Plaintiff, and the same was good without more saying.

Ejectment by Guardian in socage, the Defendant sayd, that the father did enfeof him, without that, that he dyed Tenant to the Lord, &c. and admitted good, but afterwards the Court sayd, That he ought to answer to the dying seised, for of whomsoever he held in socage, it was sufficient as to the Plaintiff, yet he pleaded over, that the Grandfather did enfeof the Plaintiff upon Condition, and that the Father entered for the condition broken, &c. 13 H. 4. 17. *gards* 81.

Acceptance of releif or a surrender shall not oust the Lord of his forfeiture of marriage, 28 E 3 92 *gard*. 49.

Ejectment lyeth against me upon the wrong done by another to my use and my agreement to it, 38 E 3 18.

It is no plea in a Writ of ward, that this heir hath an elder brother, named I who is alive, &c. without making title to him to the same land by the award of I, &c. 7 E 3 51 *gards* 24.

The Feoffee before the Statute made, *Libere & quiete faciend. servitium cum servitium quantum pertinet, &c.* shall hold of the Feoffor, because it is not expresse to whom hee shall do the forraigne service, 13 H. 3. *gards* 152.

XI. Where the Father or Mother shall have trespass for taking of the eldest Son, and another Writ for taking of the Heir, and Trespas for the Lord being in possession.

Trespas lyeth for taking of his eldest Son, 29 *Assise* 35 and there holden, that the guardian shall recover the value in marriage in a Trespas at the Common Law for taking away of the Ward, 29 *E* 3 37 and 160 where a Writ of ravishing of his ward, taking of his goods, and beating of his Servants was maintained.

Trespas, *Quare consanguinem & heredem rapuit cuius maritagium*, &c. good, without alledging that hee is yet within age, because he doth not claim as Lord, but of taking his own heir, 32 *E* 3 *gards* 32.

Trespas, *Quare filium & heredem rapuit & abduxit*, good, 21 *H* 6 14 11 *H* 4 16 33 *H* 6 55 and trespas for the Mother, *Quia filium & heredem* &c. 9 *E* 4 53 and it lyeth *Quare vi & armis filium &c.* 3 *Edw.* 413.

Trespas for taking of his ward, *Vi & armis*, although hee hath the ward again, 11 *H* 3 *gards* 140.

XII. Where a man shall be in Ward for a Remainder descended, and for a Reversion.

The heir of the Lessor for life shall be in ward, if the Lord hath not concluded himself by Avowry made upon him, But if such Lessor had granted the remainder over in fee, the heir of him in the remainder should not be in ward, living the Tenant for life, for that he is Tenant to the Lord, 33 *E* 3 *gards* 8.

A consentment to the husband and wife, and to the heirs of the husband, his heir shall not be in ward during the life of the wife, but after he shall, 28 *E* 3 93 8 *E* 4 20 *gards* 63.

A man leaseth for life, the remainder to husband and wife in taile, the remainder to the heirs of the husband, they have issue and dye, the issue dyeth, his issue within age at the death of the Tenant for life, shall be in ward, 24 *E* 3 33 *gards* 48.

So upon a Lease for life made by the Tenant of the King, the remainder over in taile, who dyeth; living the Tenant for life, the issue within age at the death of the Tenant for life, shall be in ward, 33 *H* 6 6 *gards* 17 See *P* 11 *H* 7 19 That there shall be no ward for a remainder, untill it fall, and see 15 *E* 4 in *Sherens* office, a good case.

XIII Where



XIII. Where a man shall be said Guardian for Nurture, as where he shall be charged as against the Lord, if the Infant marry, and where he shall have an Action for the Ward.

**A** Writ of Ward against a woman, she claimed but for Nurture, and was ready to yeild the ward, to whom the Court should award, and said, that one I had another VVrit against her, &c. and upon day given, she found surety to have the ward here, and at the day upon the default or one of the Plaintiffs, shee would have delivered him over to the other, who sayd, that the Infant is married. *Cant.* his plea proves that shee was no deforciores at any time, notwithstanding the possession, and shall not be changed if the infant hath married himself without her consent. Also it was said, that the Plaintiff ought to have alleged the marriage at the first day, not now, but afterwards, hee did recover the infant married, and twenty pounds for the marriage, 8 Edw 3 45 gards 25.

And upon the like plea of the Defendant, the Plainiff said presently that the Defendant had married him to her daughter, after the writ, and it was no plea for the Defendant that he was married by another; because he took away the infant, and hath confessed the marriage during his possession, and that he had right to recover the value, 7 E 3 gards 121, and 30 E 1 gards 156. where he was married before the Plaintiff had Tute to the wardship, because he had then an elder brother alive.

Guardian by Nurture shall never be charged, if the marriage be not made by him or in his possession during the time that he could govern him, but if the infant of the age of fourteen years and more, marry himself, such guardian shall not be charged, because this is altogether the Act of the infant, 43 E 3 32.

By the Custome of London, the Mayor, Aldermen and Chamberlaine, are governours of the Orphans, their Lands and Goods during nonage, and their Committee brought a ravishment of ward, and although that the custome be also, that an infant is not bound to his guardian any longer then untill he can govern himself, yet the Plaintiff need not to allege that, but the Defendant by way of answer *Per Curiam*, and being committed untill a lawfull age, this is intended one and twenty years, if not otherwise appointed by the Mayor, &c. Also the Writ lyeth, although the Plaintiff alledgeth that he hath married him to his daughter, for he shall account untill he be discharged, by order &c. also in London he shall be in ward for his goods, although he hath no Lands, 43 E 3 gards 31.

But *Belknap* held, That the Guardian in Socage shall not be put out of his ward by the Custome, because of his goods, &c. because his authority is also by statute, as is the guardian in Knights Service, where he shall

himeth by such custome, shall plead other matter, 8 R 2 *Gards* 166.  
and by him, the custome for land shall not be allowed, if not in Lon-

A writ of ward lyeth against the Mother, who claimeth nothing but  
Nurture, but not against the Schoolmaster, to whom the Lord hath  
committed him, but against the Lord himself, 12 H 4 18 *Wards* 81.

The Defendant said, That the Ancestor held of the Prince by Priority,  
and he as Bayly &c. the Plaintiff said, that the Mother being in possessi-  
on of the infant by Nurture, took the Defendant to husband, so he is de-  
fenceless, it was holden a good replication, 38 Edw. 3 18 *gards* 88.

A grant by guardian by Nurture of the ward is void, and he may take  
him again, for he hath but the government of him untill his age of discre-  
tion, (s) fourteen years, and none shall be guardian for Nurture, but  
the Father or Mother; but hee may deliver him to another to instruct  
him. But Littleton holdeth, that such a grant is good against such a gran-  
tor himself, but the Infant may depart &c. Danby saith, That such a  
Guardian may take back the infant after that he hath discharged him &c.  
38 E 4 7 *grants* 21.

See P 22 E 3 *Counterplea of voucher* 78. where the Grantee of a ward  
by Nurture of ward, shall vouch.

XIV. *Ravishment of ward for him who hath married the Heir  
after Annos Nubiles, and where he shall have a Writ, the  
Infant being married in the life of his Father.*

Ravishment by the Committee of an Orphan by custome to him as  
next of kin, because that the infant had married his daughter, the  
Defendant said, that the infant was of the age of sixteen years, &c. and  
had confessed he had the profits of the marriage, &c. yet it seemed  
the writ was good, because he is charged to the Mayor, &c. and the  
age shall be adjudged by him, and to that he shall be compelled by a writ  
of the Chancery if he will not &c. and by intendment he shall have  
the ward till the age of one and twenty years. Yet Seton said, That guar-  
dians in Knights service had been barred by such plea, because hee had the  
wardship, by the marriage, 32 E 3 3 *Gards* 31.

In Ravishment, The Defendant sayd, that he held of him by posteriori-  
ty, and it was covenanted between us and our grantor, that the Infant  
should remain with us, and he did so, and you had married him before,  
it was good without making him Title, and the Plaintiff took nothing by  
his writ, 30 E 4 *gard.* 41:

Government maintained against him to whose daughter the Infant of  
the age of consent (s) fourteen years, and took his homage in  
his writ, 30 E 1 *gards* 136.



XV. Where the heir shall be twice married by the Lord, and where by the Lord after he hath been married by his Father, or by the Ravisher.

Where it was found for the Plaintiff, and that he did not know married, and the body of the Infant in another county: By the opinion, no judgment shall be until it be found or confessed, for hee be not married, the Plaintiff shall have the marriage, and also the value, if the Judgment be given for him, for the Defendant whose is avoided, cannot have it; and tender of the Plaintiff shall be effectual &c. 16 E 3 Gards 107.

Ravishment, found that the Defendant did ravish the heir being of the age of fourteen and more, and did affye him to A. his Daughter, and that before the age of one and twenty years, the Plaintiff got, &c. and at the age of eighteen years, married him to M. the marriage did continue until by means of the Defendant, A. sued a divorce for the precontract, and the Plaintiff did appeal to the Pope, which doth yet depend, and that now the heir is of full age, &c. and by award, the Plaintiff did recover damages of forty pounds, for the ravishment, and a hundred Marks for costs, but nothing for the marriage, for the matter by him done is not defeated pendant the Appeal: Also it is not found that he was married by the Defendant, so out of the case of the Statute, &c. 27 H 6: gards 118. and Danby there saith, The Lord in that case should recover the value faire, as against the ravisher who hath married &c. and if after the heir, (being yet within age of consent) refuse the said marriage, the Lord should render him another, and recover the value again upon refusal &c.

Vi C. Littleton, 79 acc. vi. C. 9. part 132. in Holls Case, If the King marrieth a woman, who is his Ward, *Infra annos nubile;* and before the age of consent, the husband dyeth, the King shall have the marriage again, because the first marriage was not compleat. Contrary of a common person: C. 6. part in Ambrose Gorges case, vi. C. 5. part, 103. in Wardsons case, The Guardian marrieth his Ward, and after they are divorced *Contra precontract.* yet he shall not have the marriage again.

See 12 R 2 Damages 130 acc. and that the Ravisher shall not lose the single value, and that he shall have, although the heire disagree as before, and then he shall also have the marriage, 21 E 3 Judgement 150. See 43 Edw. 3. Judgement 102. and 19 Edw. 3. Judgement 123.

Note by the Court, If a man dye, his heir being married, and yet under the age of seven years, yet the Lord shall have the Wardship of the body, because no consent can be, for which the other did aver, that he was of the age of seven years at the marriage, &c. 12 Edw. 1. Gards 138.

But if the Infant marry at 4 years, his ancestor dieth, he not yet of 14 years, the Lord shall have the Wardship of his body, untill that age, because he may disagree, but if then he do assent to the marriage, he shall forfeit nothing to the Lord &c. and it was said, that if the woman be before that she cometh to the age of consent, the Lord shall marry him again, *M. 7. H. 6. 11. 13 H. 3. Wards 147. and temp. E. 1. Gards 128. and 30 E. 1. Guards 156.*

*Idem C. 6. part 22 acc. Fitzh. N. B. 143. acc.* but see 7 H. 6. 11. in the Case of the King, a tender was made to one for marriage and was discharged, for the marriage was not void, then *Quare* if the Lord shall have the Wardship.

The Lord who hath married the Heir, shall not marry him again, although that the wife die during his Non age, *A. 13. E. 1. Guards 137.* Otherwise it is, if such first marriage was by the Ravisher, *temp. E. 1. Action upon the Statute 96.*

*XVI. Where the Lord shall have the Ward, notwithstanding a Feoffment by Collusion, or where Collusion shall oust him of the Ward.*

The Lord shall not aver the Feoffment to be by Collusion, without shewing how, for which he said, that the Tenant did enfeof *w.* to find a Chaplain during his non age &c. and afterwards to reinfeoff the heir, and to render more then the Land is worth, the Tenant shewed the Deed to be absolute, and that *w.* did enfeof two, who leased to him for life, and that the Plaintiff had accepted the services of them, and homage of one of them, and the plaintiff traversed the acceptance of the Homage onely, *32 E. 3. Guards 33.*

But in a Writ of ward of a Rent, where the Defendant pleaded a Grant to him for life, the plaintiff averred the same by Collusion without shewing how, *19 E. 3. Guards 40.* But there is no challenge, but *31 E. 3. Collusion 29.* It is holden that he shall shew how Collusion, and there is no averment, that if the Feoffee did enfeof a stranger, and not the Heir, the Collusion is gone.

If the Feoffee by Collusion doth give the Land back again to the Feoffor for life, the remainder to the Heir *bona fide*, the Lord shall not have the ward, for the Collusion shall be averred and tried, and it is not apparent by *Prisot*, vide *33 H. 6. 17. and 18.* and *Prisot* there saith, If such Feoffee after the death of the father doth enfeof a stranger *bona fide*, the Lord shall have the Ward upon averment &c. because his Title shall accrue before, and the Remainder to the Heir upon a Lease or gift in Tail to a stranger, is not Collusion, Nor a Feoffment to the heir and a stranger, and as heir of the heir, is not Collusion, *33 H. 6. 17. 12 H. 4. 13. Guards 79.*



But *Moil* saith, where the Tenant enfeoffeth his eldest son and his wife that this is double Collusion, 31 E.1. *Guards* 155. so it seems Collusion averrable upon such Feoffments.

20 *Eliz. Dyer* 361. The Tenant of the King did enfeoff his brother to the intent to enfeoff his Heir male at full age, when at the time he had no issue male, the Father died, and then a son was born, this is Collusion, and the question was, whether he should be in ward for the whole, or but a third part, *Vide C. 1 part 47. 10 Eliz. Dyer* 268. but see *C. 1. 78.* that now by the Statute of 32 and 33 H. 8. for his body, and the third part of the Land.

In Ward the Defendant said, that the ancestor did not die seised, the plaintiff, that he made a Feoffment to re-infeoff the heir of full age, he shall not conclude so he died seised, but shall conclude Collusion, although the Defendant saith, that it was without condition, 47 E.3.16 and 31 E.3. *Guards* 33. he shall aver the same against a simple deed, and 7 H.4.15. against a Fine upon Release, and the issue shall be upon the Collusion, but not if the Feoffment be upon Condition &c. 19 H.6. 30.

See *C. 10 part 80. in Lowes Case*, If the eldest son purchase Land of his father, *bona fide*, for a valuable consideration, he &c. shall not be in Ward, nor pay primer seisin: So *C. 7 part 77 Cursons Case*, if the Grandfather in the life of the Father convey Land to the Grandchild: So *C. 1. 78.* if the conveyance be to any of his collaterall blood, or Bastard-children.

In a Writ of Ward, the Defendant pleaded a gift in Tail to him by the ancestor, the Plaintiff said, that it was rendring a Rose the first 8 years, and afterwards 40 l. so Collusion, and the Defendant could not aver the tail without shewing a Deed, and that was rendring, *ut supra*, yet he shall aver it *bona fide*, 4 E.2. *Guards* 119. and note, the shewing of the Deed is by the words of the Statute, which wills *Quod inquiratur per testes nominatos in chartis & alios &c. Marlebridge cap. 7.*

Collusion shall not be averred upon a gift to the eldest Son in Tail, the remainder over, 27 H.8.7. and 10.

Note the opinion of *Gascoigne* and others, If a man who holdeth of the King, and another, makes a Feoffment of the Land holden of the King, either by Collusion, the same is not remedied by the Statute, because no Wardship is lost thereby, and the King shall not have the Wardship, 9 E.4.7. *Traverse* 15.

#### XVII. Where a Ward shall be recovered by Proclamation

**U**Pon Default of the Defendant at the Proclamation returned, the Plaintiff shall recover the value of the Land, and the marriage, and damages if &c. and a writ shall be to the Sheriff to enquire of the value

and the time which he hath occupied the Land, 42 E. 3. 1. *Guards* 95. and upon one returned dead at the Proclamation, and the others warned which do not appear, Resummons awarded against the heir of the dead, who appeareth and saith nothing, by which the Plaintiff shall recover against them all, 9 E. 4. 15. *Wards* 15. and a Writ awarded to inquire of the damages, but the Court would advise, if the heir being within age, should render damages.

Heir gave Judgement upon default at the Proclamation *Salvo jure* &c. and awarded a Writ to enquire of damages. *Hill* said, that he who loseth the Ward by Proclamation shall never have an action, notwithstanding the Statutes which speak, *Salva sibi alia actione* &c. 16 E. 3. *Guards* 108.

A ward shall never be recovered by Proclamation, if there be not three Counties, and three Proclamations, by the Statute of *West*, 2 cap. 35. and if all the Proclamations are not made for the shortnesse of time, all is void, and an *Alias* shall issue forth to begin again &c. 2 H. 4. 1. *Return de vi* 41. but it seems there shall not be new Proclamation, but Proceffe at the Common Law, 3 H. 4. 6. And note, that the Proclamation shall be in the County onely where the Writ is brought, 17 E. 3. 70.

XVIII. Where the body of the Heir shall be in ward, and the Lands, and where the Lord in Knights-service shall have no ward, and where a man shall be in ward after his full age.

If a man marrieth his daughter being within age to a man of full age, and dieth, his Land shall be in Ward, 20 H. 6. 15.

If one be found heir to the Kings Tenant, and hath Liverie because of full age, and after, another is found heir &c. yet there shall be no refei- sure if he be also found of full age, 12 R. 2. *Liverie* 28.

In an assise of *Mooridancestor*, the Tenant justified as Lord by the non- age of the same plaintiff, he said that the same Tenant granted to him, and his heirs, that they would never claim any thing by reason of Ward, in the Lands, which his father held of him, nor in the marriage &c. and thus not being denied, the assise was awarded, 19 E. 3. *Avowry* 224.

Where the heir entreth into Religion, there is no Wardship, 12 R. 2. *Guards* 106.

If the Kings Tenant die, his daughter and heir of the age of 15 years, is withholden she shall be in Ward, but if she had been within the age of 14 years, she should be untill 16 yeares to make the tender, *West* 2 cap. 22. *Fortescue*, if she be married in the life of her father with- in age, she shall have her Lands at 14 years, whether the Husband be of full age, or of full age, because no marriage can be, 35 H. 6. 49. and



35 H. 6. 42. *Guards* 7: Where by the Justices, the heir female being in ward to the Lord by priority, may well enter upon the Lord by posterity at 14 years: also the grantee of the King shall not have advantage to tender her a marriage after 14 years, nor the King himself, but she shall have livery, also she shall pay the forfeiture for marrying her self within the two years after the 14 years, against the agreement of the Lord, by *Prisot, Markham, Yelverton and Danby*, but *Fortescue* was contrary.

*Vide* 35 H. 6. 41: by *Wangford*, If a man holds Lands of two, one by Priority, the other by Posteriority, and dieth, his daughter within 14 years: he who holdeth the Land by Priority, seiseth the Wardship of the body and Land, and the other seiseth the Land holden of him, when she cometh of 14 years she may enter into that Land; for none shall have the Land till 16 years, but he who may tender her a marriage.

But see *F N: B: 256. 257*: if the heir female hath Land in *Capite*, and Land in *Socage* holden of the King, she shall not have the *Socage* Land at 14 years, but shall stay the two years, so as she shall sue forth Livery.

Also it was agreed by the Court, that so soon as the Lord hath married her after the age of 14 years, she shall have her Land presently: So if she were married before 14 years, she shall have her Land at 14 years, although her husband be dead before, so the two years are given for the Tender, because the Tender before that age is void. It was alledged that *Bracton* saith, that the age of male and female, is all one, the Court said, it was never holden for authority in our Law.

The Heir female being of the age of 14 years at the death of her ancestor shall not be in Ward, because that is her age, 39 H. 6. *Guards* 67. *Lit. 22. & 35 H. 6. 40. acc.*

XIX. *Where a Right, or Ravishment of Ward shall be maintained at full age, where after the death of the Heir.*

**A** Writ of Right of Ward shall abate, if the heir come of full age depending the Writ, not so of Ravishment of Ward, although he be of full age before the Writ brought by *Danby*, 9 E. 4. 50. 11 H. 6. 8. but the Reporter saith, it shall be a good plea, that the heir was of age, the day of the Writ &c. 9 E. 4. 50.

Ravishment of Ward shall not abate by verdict, finding that the heir is now of age &c. 27 H. 6. *Guards* 118. but the party ought to declare, that he is yet within age, 37 H. 6. 7. *Guards* 60.

A writ of Ward of the Land, shall not abate by the death of the infant depending the Writ, otherwise it is of the body, 31 E. 1. *Guards* 130. but it seems it should abate before the Statute of *West*, 2 cap. 35. 11 H. 6. 8. *Affise* 9.

XX. Where tender of Marriage is materiall, where not.

IN forfeiture of Marriage, the Plaintiff declared of the Tenure, and Tender, the Defendant said, that the Plaintiff did render back to him his land, and accepted of his releif, &c. and was driven to answer over, but that Challenge was entred at his prayer; wherefore he said, he was of full age at the time of the Render, &c. 28 E: 3. 92. *Guards* 49.

But see 31 Aff. 26. Action upon the Statute 32. That the Lord who hath surrendered unto the Heir, shall not have the land after for the value by Remainder. And note there, that in intrusion of marriage, the Lord need not to alledge a Tender, as he must do in a forfeiture of marriage. Also in a *valore* of marriage, he need not alledge a tender, because the same is *mero jure*, 3 H: 79. *Guards* 68. But issue shall be upon the Tender in intrusion of a Ward, 40 E: 3. 6. and that tender is not good without sight of the woman. See *F. N. B.* 141. Tender alledged in the one Action and in the other.

*Vi. C. 5. part, Palmers case*, The Guardian shall have the simple value without tender.

28 E: 3. 92. In forfeiture of Marriage, the Plaintiff was compelled to shew the woman.

*Markham* saith, That the Lord shall have the value of the marriage without any tender made.

*Fortescue*, In a forfeiture of marriage, he ought to declare of the Tender, but it is not traversable, but in a *valore maritagii*, the tender is materiall, &c. *H: 6. 52: Wards* 71.

Issue was taken upon the tender in a forfeiture of marriage, 16 E: 3. Action upon the Statute 14. and 14 E: 3. Action upon the Statute 16, and 17 H: 3. Action upon the Statute 27. It is no plea for the heir that the Plaintiff may recover against the Ravisher, if he do not deny the Tender.

XXI. Where the Lord shall have the double value of the Marriage against a stranger, where the simple value, and where the value twice against two, and where he shall have the land against the heir, where the value, where the double value.

It was found that the Kings Tenant had two Daughters, one within age, but they know not whether she be married, Judgment was given, that she should recover the Ward, and the value, if she were married, but not the double value. And a Writ was awarded to the Sheriff for the body, and another to distrain the party for the body, 47 E: 3. 19. *Guards*



103. But where it was found she was unmarried and afterwards alleged that mean between the Verdict and the Judgment, she was married; yet the Judgment was to recover the Ward and not the value, &c. 14 E. Judgment 157.

And where the Jury doubt as before, and the Defendant saith she is not married, the Plaintiff shall recover the Ward, and Damages without the value, because he doth not maintain that she is married. And the Plaintiff shall not recover in a Writ of Ward the value against the Vouches, but against the Defendant, and he over, 16 E. 3: Guard 167.

*Valore Maritagii* maintained by the Grantee of the King, although that before upon a *Scire facias* against him he held over by a Ward, because not satisfied of the marriage; and at another time he did allege Seisin in the Kings hands, which was proved for the Farm of the Guardianship, so his default: But untill the King hath made Livery to the Heir, the Grantee shall render the Farm of what age soever the Heir be, and that Farm shall be intended the very value, &c. 43 E. 3: 2. But see there, that upon Award or composition, that another mean Lord shall hold for the value of the Marriage, it shall be adjudged according to that which he might have levied by the time, &c.

And note, that when the Lord hath cause to have the double value, it is in his Election to retain the land for it, or to have an Action of Forfeiture of marriage to recover it, for it may be that the land holden of him doth not amount to half the value, &c. 18 E. 3. 18. Action upon the Statute 15.

*Vi.C. 4. part* in Sir Miles Corbets case, ac. 15 E. 4 5. 7 Hi. 6. 12. But if the Lord holdeth the land for the single value, the profits received are only as a pledge, untill the Heire satisfieth to him the value of the Marriage, where he holdeth for the double value, the profiture part of the value.

The Lord by Posteriority shall never have Forfeiture of Marriage because he hath nothing to do to meddle with the body, 7 E. 2. Action upon the Statute 33.

In a Writ of right of Ward, Issue being upon the Priority, it was found for the Plaintiff, and that the Heir within age of fourteen years is married, and damages given. And the question was, whether the damages should be three hundred pounds, or a hundred pounds; and there it was held that he should not have Judgment for three hundred pounds, for then perhaps he must have the value twice, 21 E. 3 Judgment 150.

XXII. Where the Lord may choose to have the Services, or the Ward of his Tenant.

If the Mesne dieth, his Heir within age, the Lord may distrain the Tenant, and avow upon the Mesne for the ancient Services: But if the Tenant be attainted of Felony, the Lord shall not have but the Services which are due to the Mesne, 1 E:3.6. Avowry 68.

So if my Tenant leaseth for life and dieth, his Heir within age, I shall have Election, &c. but upon Avowry made upon him I shall be stopped to claim the Ward, 33 E:3. Guards 8.

XXIII. Where the Guardian shall put out the Termor, or Tenant by Statute, or Elegit.

DR. R. saith, that the Guardian shall put out the Termor of Lands, Doot of wreck of the Sea, nor of an Advowson granted for years: Also he shall not put out Lessee for life: But if Tenant in tail of a Mannor with an Advowson doth discontinue, and after presenteth unto the Advowson by Usurpation, and grants the next avoidance over, and dieth: that the Grantor shall put out the Grantee, 5 H:7.3 6. Guards. 69. But afterwards he held that the Lord should not oust the Grantee of the next avoidance, & alii contra, vi. 15 H.7.7. Guards 158. Where Grantee of the third Avoidance shall have the fourth against the Lord, because he could not have the third against the wife, Tenant in Dower: And it was there holden, that the Guardian should put out the Termor, because this Condition in Law shall be as a Condition in Fait. And there Brian held, that he shall not put out the Termor; But others against him.

Covenant by a Termor, against the Heir, because he was ejected by the Usurpator, for a Tenure found of the King, &c. And he was driven to allege in certain, that he was ejected by Title, 3 E:2. Covenant 6.

So the Assignee of a Termor ejected by the Guardian, shall have Covenant against his Lessor, if he hath a Deed, and he over against the heir, if he be ejected by Title, 31 E:1. Covenant 26. and that at full age of the Heir temp. E:1. Covenant 31. So if he be ousted by Collusion found, as where a Feoffment was, rendering the first year a Rose, and afterwards ten pounds, &c. 18 E:3. Covenant 7.

And where Lessee for life and ten years over, grants the Term and dieth, his Grantee being put out by the Lord shall have Covenant, 19 E.

Covenant 25. And although that the Termor who is put out, do purchase again of the Lord, yet he shall have Covenant against the Heir at the full age, &c. 34 E:1. Guards 129.



An Affise of a Rent granted by the Ancestor, the Heir in Ward prayeth his age. *Hill*, It hath been holden that the Guardian should hold discharged, but afterwards it was assented by Parliament, that the Affise should be taken, 3 *E:3. Affise*. 176. And *Herle* held that he should hold charged, 3 *Aff. 1. Affise* 182.

It was holden, that the Guardian shall not put out Tenant by Elegit, but a Lessee for years he might, 1 *E:3.3. Guards* 13.

And it seems also, that he also shall put out Tenant by Statute-merchant, who hath execution in the life of the Ancestor, for the Title of the Lord is elder, and their right is saved to them at the full age of the infant, &c. *quare* 36 *E:3. Guards* 9.

It seems by the Statute of *Mercatoribus*, That execution shall not be sued against the Heir untill his full age: And therefore 33 *H.6.47*. thinks that the Guardian may put him out, *quare* of Tenant by Elegit.

**XXIV.** *VVhere the Donor or his heir shall have the wardship of the heir in Frank-marriage, within the four degrees.*

**T**He degrees of Frank-marriage shall be accounted from the Donor to the Donee the first, &c. and the heir of him who is in the four degrees, shall hold as the Donor, and if he in the third degree alieneth, and takes back to him and his second wife, and hath issue by the first, yet the heir of the second wife shall be in ward, as issue of the wife after the fourth degree, for this doth end in the issue of the first wife, and it was said, that by no devise of the Donees, &c. in frank-marriage, the Seigniorie of the Donor shall be discontinued, because he hath no action, nor remedy to recontinue it, 1 3 *E 3 guards* 116.

And Homage done by Tenant in Frank-marriage, shall not bind the heirs within the four degrees, because that the Law hath discharged him of wardship and service, *en. temp. E 1 Guards* 135 But he shall do fealty, by *Littleton* 15.

**XXV.** *VVhere the heir shall be in ward for Lands to which he hath right, or to which he cometh by his own Act, or by the Act of the next of kinne.*

**I**N a Writ of ward, The Defendant sayd, that the Ancestor did not die this Tenant, the Plaintiff sayd, that the Ancestor was seised, and became of *Non sana memorie*, made a Deed of feoffment and Letters of Attornay

tenney to deliver seisin &c, and after his death the heir did enter by his  
 next of kinn, &c. and for that the opinion was, that he dyed his Tenant,  
 because the livery by the Letter of Attorney was void, but the heir who  
 recovereth in *Non compos mentis*, shall not be in ward, 7 H 4. 12. And  
 note, he shall not be in ward by recovery in no action ancestrell where  
 his entry was not lawfull, as in a Formedon, *ibidem*, But see that the  
 entry of the heir is lawfull upon alienation made by the ancestor, who  
 was *Non compos mentis*, as it appeareth, 34 H 6. 45. and by Perkins 5.  
 and therefore it was holden, that upon a recovery in *Non compos mentis*  
 or *Dum sit infra aetatem* he shall be in ward, 11 H. 7. 12. If the heir  
 recover in a *Mortdancester*, he shall be in ward, 12 R 2 Livery 28.

If an infant alieneth and dyeth, and his heir within age entreth, he shall be  
 in ward, 7 H 4 12 but if hee do not enter, the Lord shall not enter for  
 him, 6 H 4 4 And if the heir enter for a condition broken, hee shall be  
 in ward, or in that case, if the next of kinn enter for him, 39 Ed. 3 36  
 gards 92. 11 H. 7. 12.

Diverse Parceners did recover in a *Formedon* as upon abatement, and  
 one within age, and in ward to the King, whereas in truth, he against  
 whom &c. did disseise the Tenant by their Covin, &c, and the others be-  
 ing impleaded had aide of the third in the ward of the King, notwith-  
 standing that the Demandant did tender to averr as above, &c. and that  
 there was no gift, 11 H. 4. 60.

Hankesford saith, If the Tenant make a Feoffment by collusion, the  
 Lord shall not have the wardship of the body, untill he hath recovered  
 the land, and if the heir of the Disseisor be in, and the Disseisee dyeth,  
 the Lord shall not have the wardship of the heir untill the hath recovered  
 the Land, which the court agreed, 22 H. 4. 13. gards 79 vi. 15 E. 4 11.

But is conceived, That the Lord shall have the wardship of the heir  
 of the Disseisee who dyeth in the life of the Disseisor, before a Discent  
 call; because he may aver that he dyed his Tenant, 14 H 4 15 Issue 138  
 but after a discent is cast, it is clear that the heir of the Disseisor is Tenant  
 to the Lord, and he shall be in ward, 48 E 3 8 Avowry 83. 19 E 3 64 and  
 36 E 3 Gards 10. Where it is holden a good plea, that the Ancestor had  
 not any thing at the day of his death, and that he shall not seise the bo-  
 dy of the heir of the Disseisee, untill he hath recontinued the Land.

See C 3 part in *Butler and Bakers* case, That the heir of the Disseisor  
 and Disseisee shall be both in ward.

A holdeth two Mannors of two Lords by severall services, Knights  
 Service, and makes a feoffment and takes back at one day to him severally  
 by fine for his life, the remainder to his heir in taile of one, and the re-  
 mainder of the other unto his heir, and to his wife in taile, and dyeth, the  
 heir entreth into both at one day: and discontinueth that which hee hath  
 in jointure after the decease of his Mother, and dyeth: Now if the issue  
 recover that, or re-entreth for the Mortgage mony paid, or if the discon-  
 tinuer surrendreth to him, or enfeoffeth him &c. The Lord who first lights



upon it shall have the wardship of the body, &c. 33 E 3 *Gards* 162.

See that Tenant in taile and his issue shall do homage to the Donor, 8 E 4 *Avowry* 36. 7 E 4 27 and the Donor shall have the wardship of the heir of the Discontinuee, yet he shall not be driven to avow upon him, 20 H 6 9 *Avowry* 12 41 E 3 8 *Avowry* 65 48 E 3 8.

Tenant in tail of a Mannor with an Advowson doth discontinue &c. and afterwards usurps to the advowson and dyeth, the Donor seiseeth the ward, and presents to the Church, putting out the grantee of the Tenant in taile, of the next avoydance, 5 H 7 36 *gards* 69. The opinion is, That the Donor shall have the wardship of the heir of the Tenant in tail, which hath discontinued, 18 E 4 11. *Quare*, for if my very Tenant alieneth, and dyeth before notice given unto mee, yet I shall not have the wardship of his Heir 2 H 4. and here there is no right remaining to the Heir.

XXVI. *Where the Lord shall seise his ward, and take him although he be in the service of another.*

THE Lord may well seise the heir within age, although he be retained in service in the life of his Father, 14 H. 4. 31. *Issue* 139.

Ravishment of an heir female, the Defendant did alledge, that before &c. she was retained with him; &c. the plaintiff took her, and he re-took her, without that he will averr, that at the time &c. shee was of the age of fifteen years &c. this is a good justification. But *Danby* saith, that hee ought to traverse, without that, that he did ravish her within age, 8 E 4 22 *gards* 64.

*Catesby* saith, That if the guardian by nurture, command the Heir to go out of his house, and he will not give him victualls, that he cannot afterwards take him again out of the service of another: *Danby*, That he may well do, 8 E 4 7.

XXVII. *Where the Recovery of one shall give advantage to the other, although he was severed before, and where he that recovereth shall have all alone.*

A Writ of Ward by two Parceners, of the body, one doth recover, the other being severed, yet she shall have an account for the profits of the moietie against her who recovered, but if she hath released to the defendant, she which recovered may plead this release in bar against her, and that without shewing by reason of the privity, but cannot maintain an action against the Defendant in her name, without naming her

for who hath the Release by reason of this Release by *Finteden*, who said, that they recovered in common, notwithstanding the Release, and that decided against the one shall not hurt the other, but she may maintain the Action without naming of him who hath the Release, declaring only of Tenure, and not of the descent, and so is it abridged by *Fitzh.* and that the Defendant may well plead the Release of the other who released, being named, 45 E. 3. 10 *Guards* 100. and the same case for account, *vide Accompt* 36.

*Kirten* saith, that in a Writ of Ward for the body by two, If the one be non-suit, the other shall recover the whole, and that shall serve his companion also for their common use, so if one Defendant make default, the other shall have the whole to their common use &c. 49 E. 3. 19. *Guards* 104.

*Thorp* saith, that if two Parceners bring a *Quare impedit*, and the one is Non-suit, the other shall sue for the whole, because it cannot be severed, and shall have a Writ to the Bishop for them both, and their common Clerk shall be received &c. 38 E. 3. 35. *Quare impedit* 126.

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XXVIII. Where Proceſſe shall iſſue to have the heir in Court, to deliver to whom the Court shall award, and who shall have the custodie pendant the Writ.

**R**avishment in the County of *D.* the plaintiff doth suggest in Chancery, that the Infant is in the County of *N.* and hath a Writ by the Statute from thence to have him in Court, to be delivered to whom the Court shall award, and at the day the Sheriff hath him readie &c. and because the original was not served, he was delivered to the Defendants again, 34 E. 3. *Guards* 164.

It was holden, that the Infant shall be delivered to the Sheriff depending the suit, untill the matter be discussed, and if he deliver him to the defendant, the plaintiff after Judgement for him shall have a Writ from hence against him who hath the possession, or against the Sheriff, and shall not be put to a new Writ of Ravishment &c. 12 H. 4. 6. *Garnishment* 22.

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XXIX. Where the Lord by his act shall conclude himself to have the Ward.

**B**y acceptance of Homage of the eldest Son of the Feoffee in the life of his father, the Lord shall be estopped for to claim the Ward after, but not so of fealty, Rent or other Service recovered out of a Court of Record, 36 E. 3. *Guards* 11.

But *Prisor* held the contrary, and that he shall not be estopped, because that



that he could not refuse the Homage after notice of the Feoffment, *H.6 17 Collusion 36.* but *31 E. 1. Guards 155.* there is a difference put of acceptance of homage in the life of the Father, and after his death, and in the first Case he shall be concluded, and in the last not, because the Statute of *Magna Charta* doth tie him to accept homage before he hath the Ward, and the acceptance was but of Fealty, but *32 E. 3. Guards 33* where the acceptance of many Services was alledged, the Lord shall answer onely to the acceptance of homage, as that he accepted of it for other Lands, and so the acceptance of it shall bind.

The Tenant of the King made a gift in Tail and died, the King doth accept his heir for his Tenant, *Fitz.* conceiveth, that he shall not be thereby concluded, to take the issue in Tail in Ward by the Statute of *34 E. 3. cap. 15. F.N.B. 143.* but see the contrary to that *4 H. 6. 20. Guards 50.* and that the acceptance of the Services shall be intended homage, *Idington* and the Court so adjudged, but *Fitzh.* thinks it no Law, but that the King may well choose the Tenant in Tail for his Tenant, as he did, *47 E. 3.* in a *Quare impedit*, as *Fitzh.* there alledgeth it.

The Lord shall not have the Wardship of the heir, untill he hath accepted his homage, because by that he hath the Ward, he hath lost the Relief, and in lieu of Relief he ought to take the homage *13 E. 1. Guards 163.* but the Donor shall have the Wardship of the Issue in Frankmarriage, without taking homage of him within the four degrees &c. *13 E. 3. Guards 142.*

XXX. Where the Successor of a Bishop shall have a Ward fallen in the time of his Predecessor.

**I**F the Tenant of the Bishop dieth, his Heir within age, and the Bishop dieth before Seisure, the Successor may well seise the Ward, have a Ravishment of Ward, and also a Writ of Right of Ward by some, *2 H. 4. 19. Guards 73.* agrees of the Right of Ward, *M 6 E. 2. Wards 120.*

And the Executors of the Bishop shall not have it, but where the Bishop seiseth; nor the King shall not have it if the Tenant dye, not the Temporalties being in the Kings hands, *40 E. 3. 14. Brief 52.*

But the King shall recover an Advowson which voids in the time of the Bishop against his Successor, *M: 24 E. 3. Quare Impedit 11.*

XXI. Where the King shall not have the Ward although he hold of him, and where he shall not have the Ward of a Tenure of him by Estoppel, &c.

A Mannor was seised into the Kings hands, because the Tenant did adhere to the Scots, and he gave it to T. to hold of him, who dyed, within age: One S. of whom the Mannor was holden before, seized the Ward, and was put out by Office found: And at his Suit in Parliament was awarded that he should have again the Ward, and the Statute was repealed, 46 E.3. Petition [19. see 47 E. 3. 21. a difference where it cometh to the King by a common Escheat, and where by Forfeiture of Ward, and the latter case, his Patentee held as of his Crown.

Direct by the Lord of a *Præcipe in Capite* brought of the land, &c. he did not recover damages according to the value of the Seignior, because he may have it again by Petition. And Stone said, That the King shall not have the Ward by reason of such a Seignior by Estoppel, 17 E. 3. 37. But see 46 E. 3. 12. the Lord put to his Petition for reversal a Seignior to the King by Estoppel (s) by Conusans in a Court of Record, vi. 20. Aff. 17. vi. 45 E.3. 6 47 E.3. 31. 50 E.3. 23. ac.

If the Kings Tenant and another be disseised of lands holden of the King, and now the Heir of the Disseisor is in by descent, the Disseisee direct, the other Lord seisseth the Wardship of the land of the body, afterwards the Heir doth recover in a Writ of Entry.

Littleton saith, That now the King shall have the body, and also the land holden of the other. *Dygas*, that's a marvell, &c. 15 E. 4. 10.

If the Tenant enfeofeth the King, and takes back an Estate, &c. yet he may Tenant in right, and the King hath not but a Seignior by way of Estoppel, as it was said, 45 E.3. 6. 46 E.3. 12. b. 47 E.3. 21. ac.

XXII. What advantage or Prerogative the Committee of the King shall have.

Of the Committee of the King of a Ward shall not have any other Wardship by reason of it. 35 H 6 guards 70. And there Guards 14. by the Judges. And also the King shall have Presentments to Advowsons of the Committee, unless he gave express words to have them. But he holden to H. 4. 25. Guards 82. That the Committee of the King shall have Ward by cause of Ward, although that the King doth remain because that when it cometh in lieu of Services, the Grantee shall have the same Prerogative as the King, so more is granted then the Ward, the Lord also shall have advantage against another Lord by



by Priority, as the King should have had, *libid.* But the Grantee of the King of the Seigniorie shall not have the same advantage, *per Curiam*, *M. 14 H. 4. 9. Guards 68.*

The Committee of the King of the Heir female, shall not have the marriage if he do not tender her a marriage, untill after the fourteen years, because he is not Guardian, so he shall not have advantage of the two years given by the Statute, *35 H. 6. 52. Guards 71.*

If the Grantee or Committee of the King be put out of the land, and the Heir, or of the land alone, he shall have *Amoveas manum* upon a suggestion in the Chancery, as the King himself should have: For Ejectment doth not lye for the King, but the Writ shall be generall, and not to answer the profits, nor to make Fine, but only *amoveas manum*, &c. *Subpoena*, &c. *35 H. 6. Suggestion 9. 1 H. 7. 18.* he had the Writ out of the Chancery. But *4 H. 7. 7.* it is said he shall have it out of the Exchequer.

But of things transitory, the Committee is put to his Action at the Common Law, as Ravishment, or *Quare Impedit*, because the King himself shall have them, *4 H. 7. 1.*

If the King commit the whole land, where parcell is holden of another Lord, he shall not distress upon the Committee for his Rent, no more then upon the King; *44 E. 3. 13.* But he who hath a Rent-charge may distress the Committee, by the opinion of *21 H. 7. 2. quere.*

An action upon the case for that he did enter into certain land committed to the Plaintiff by Nonage, &c. and levied certain summs of money in the contempt of the King, &c. and the Writ abated by a Ward, for he ought to have an Ejectment, or account of the Receipt, &c. *P. 11 H. 4. 63.* it is said, that he shall not have the Action which the King could not have there. See *43 E. 3. 6.* Action upon the Statute *11.* The King shall have the Wardship of the Heir of his Tenant by whom he granted the land to hold by Services due, for the best shall be taken for him, *44 E. 3. 45. Guards 7.*

XXXIII, Where the Heire of him who dieth in Ward, shall not be Ward to the first Guardian, although it be the King.

THE King hath a Seigniorie, which belongeth to the Prince in his hands, and by reason thereof hath the Ward, &c. and he makes Livery to the Prince, and afterwards the Heir being in the Ward of the King, dieth, his Heir within age, the Prince shall have the Ward of him, and not the King. So where the King hath a Ward by reason of another Ward, and to him makes Livery, now if the other dieth, his Heir within age, the King shall not have the Wardship of him, for he by reason of which, &c. *13 E. 4. 10.*

The King shall have the Wardship of the Heire of him who holds of the King by Posteriority, 12 H. 4. 25.

If the King grant the Wardship *de herede in heredem quamdiu, &c.* if he come to his age, and dieth before Livery, his Heir being within age, shall not be in Ward to the Grantee, but to the King 14 E. 4. 7.

Note by *Belknap*, That for Ward because of Ward, the King shall not have but the lands holden of himself, 6 R. 2. *Guards* 105.

XXXIV. *What Tenure draws Wardship.*

Note, where a man holdeth of the King to find him a Horse price 5 s. & *unam sacrum, & unam brotheam per xl. dies quando Dominus Rex irat in exercitu in Walliam*, this was adjudged Petite Serjeanty, and the King shall not have the Wardship by reason of such Tenure, 9 H. 3. *Guards* 145.

Where a man holdeth of the King to find a man in his war by 40. daies, this is adjudged grand Serjeanty, because it is to be done by the body of a man, and by his own body, and he cannot find another for him, 24 E. 3. *Guards* 47. &c.

Note, it was adjudged by the Court, that this is grand Serjeanty, if a man holdeth of the King to go with him *In exercitu versus Scotiam in regardia, & in redditu suo in retrogardia*. And so if he holdeth to give to the King Horn-geld, which is Cornage, and the King shall have the Ward for it, 23 H. 2. *Guards* 148.

The Heire shall be in Ward for a Tenure by Castle-guard to be done in England, yet this is no Service out of the Realm, but it is as Escuage, and of the same nature, *per Curiam*, 19 R. 2. *Guards* 165.

XXXV. *Where, and in What County the Writ of Ward shall be brought.*

A Writ of right of Ward of land, and of the body shall be alwaies brought where the land is; but a Writ of right of the body was brought in a another County, and awarded good, 40 E. 3. 6. *Wards* 93.

XXXVI. *Where the Title of the King shewed to the Court after Verdict for the party shall oust him of his Judgment against the other party.*

In a Writ of Ward it was found for the Plaintiff, and before Judgment was alleged that it was found by Office, that the Ancestor held five acres of one who is in Ward of the King, &c. yet the Plaintiff shall have Judgment, because it is not alleged that the King, nor the Escheator



tor in his name hath not seised the Ward in Fait, but if he had seised him, the Justices shall surcease: But the King shall have a *Scire facias* against him, who recovereth also for the damages, whether the Infant be dead, or alien, &c. that is before Judgment, &c. *M. 6 R: 2. Guards 105.*

XXXVII. *Non-certainty of the Tenure adjudged for the advantage of him who departs with the Land.*

**I**F the King make a Feoffment *tenend. per servicia debita, &c.* this shall be intended Knights Service, and he shall have Wardship, *44 E: 3: 45. Guards 7.*

So where a common person before the Statute made a Feoffment, *Tenend. libere & quiete, & faciend. forinsec. servitium* such a Feoffee held of the feoffor, not of the chief Lord, which he should have done, if it had been *faciend. capitali domino forinsec. servitium, &c. An. 12 H: 3. Guards 152.*



## R E L I E F E.

1. *Where the Heire shall pay Relief, although he be in Ward, and within age at the death of his Ancestor.*

**N**Ote, the Heir being in the Wardship of the King, when he cometh to his age shall pay Relief to the other Lords. And *Hill* saith, that the Lords shall have the rents of the lands holden of them by petition during the Seisin of the King, because of the Wardship, &c. *M. 19 E: 3. Relief 1. 29. Ass. 5.* agrees, that upon petition they shall have Judgment against the Committee upon his default, and an Assise against him for the rent withdrawn after, agreeing to the whole in the first case, is the book of *24 E: 3. 24. Relief 7.*

11. *Where the Heir being in by Feoffment shall pay relief.*

**I**T is said, that the Lord shall not have relief of the Heir of the Feoffor of his Father, although he shall have him in Ward, if he were within age.

Seton saith, That the Wardship is by Statute, which speaks nothing of relief, so the same remains at the Common Law, and the Lord challengeth nothing but that he had not notice of the Feoffment, nor the Son did not attorn to him: And *M. 17 E. 3. 63. Relief. 3.* See if he shall have relief by equity of the Statute, *vi. 4 E. 3. 22.* that he shall have relief.

Thorp saith, That if the Tenant enfeoffeth his Heir of full age, the Lord shall not have relief, because out of the Statute, *P. 31 E. 3. Collusion 29.*

If my Tenant enfeoffeth his Son of full age, and dieth before the Son give me notice, I shall have relief, for the Father died my Tenant as to Avowry. *Fitz. thinks it is not Law, for the other was by Tenant in Fact, 7 E. 3. Relief 11.*

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*III. Where Relief shall be paid for the Descent of a Remainder, and when it shall be paid.*

I acknowledgeth a Fine to *B.* who renders the same to him for life, the remainder to his Son *T.* and *E.* his wife in tail, the remainder to the right Heirs of *I.* who dieth, and *T.* dieth, and *E.* dieth without issue, now the right Heir of *I.* shall pay a relief unto the Lord, as Heir of *T.* the Son, because if *I.* had survived *T.* and his wife, he had been seised in fee, and a Writ of Right would lye against him, so the fee was in him, and from him descended to *T.* *40 E. 3. 9. Relief 2.*

Land is given to *I. S.* for life, the remainder to his right Heirs, he shall pay a relief, because he is in by descent, *32 E. 3. Relief 4.*

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*IV. When Relief shall be paid after the death of the Ancestor who had not possession in fait, but onely a possession in Law.*

The Heir of the Lord avowed upon the Tenant, for the relief of his Grandfather, after the death of his great Grandfather, and of his Father after the death of his Grandfather, and layed the Seisin of the Seignory in his Grandfather, and the Seisin of the Tenant in the great Grandfather of the Tenant, and alledged the discent from each to the other, *M. 13 E. 3. Relief 6.*



V. *Where Relief shall not be paid for a Tenure in Fee-farm.*

**F**inchden saith, That every Fee-farm is intended the very value of the land, and therefore he shall not pay relief: But the Seigniorie was of such a Feoffment made before the Statute of *Quia emptores terrarum*, or after, *Quare* 45 E.3.15. *Cessavit* 15.

VI. *Where Relief shall not be paid, because the Lord hath received Homage, or Fealty.*

**N**ote, the opinion is, That after the receipt of Homage, a man shall not avow for relief, P. 15: E.3. Relief 5: and therewith agrees P. 16. E.3. Relief 10.

VII. *Relief of the Heire of the Feoffee of Tenant in tail, or of the Issue in tail after a Discontinuance.*

**N**ote, the Donor in tail may take the Discontinuee for his Tenant, and avow upon him for Services, and upon his Heir for Relief, as *Bulknap* said that he did: And *Persey* said, that for relief the Donor for necessity shall avow upon the Heire of the Discontinuee, because this is a thing in possession to be paid, H: 48 E.3. 8. *Avowry* 83.

VIII. *Where Relief shall be paid, although that the Tenure be by Fealty and Rent for all Services and Demands.*

**I**f a man maketh a Feoffment to hold of him by Fealty and Rent for all Services and Demands, he shall have relief, for the same is no service of it self, but an approvement which issueth of the services, 30 E.1. Relief 13.

*Vi: C: 4: part 49.* the Executors of the land shall have debt for relief, because it is but an Improvement: But the Lord himself shall distraine, and shall not have debt, 7 H:6. 13. 20 H:7:1:vi: 10 H:7: 10: that it is not properly a debt:

*Hank* saith, That when a man makes a Feoffment *tenendum, &c. pro omnibus serviciis & demandis*, those words do not exclude anything incident to the Services before, as if it were Knights-service reserved of the Premises, he shall have Ward, Marriage, and Relief, and Relief if it was

to hold by a penny *pro omnibus*, &c. by Skrene. Also Heriot, Custome, which runs throughout all that Country, or Honour, is not gone by those words *pro omnibus*, &c. Otherwise is it of a particular Custome, Suit to his Court, and such not expressly reserved by the Premisses, 14 H:4. 3. Avowry 60.

A man gave Lands to husband and wife in tail by Deed, which was, *Pro homagio & servitio suo habendo, & tenendum ut supradict. est, reddendo annuatim 2. markes pro omnibus servitiis, exactionib. secular. & cunctis demandis, salva sexta curia.* And adjudged by the Court that the Donor should not have Homage nor Relief upon such Deed, nor no service but the Rent, &c. Fitz. conceives the Law to be contrary, &c. M: 13 H: 2. Avowry 89.

A Feoffment before the Statute by Deed, which was, *Tenendum pro 10 s. rent, Pro omnib. secular. servitiis, exaction. consuetudinibus, & demandis.* And upon a Demurrer in Avowry for Relief, the Lord had return by Award of the Court: for the Court said, that it was common Law, That the Heire of him who held in Socage should double the rent, and this advantage was incident to the Seigniorie: As also Relief is incident to Escuage, 18 E:3. 26. Avowry 99.

IX. Where an Abbot or Prior shall pay Reliefe, where not.

**A**vowry upon an Abbot for Relief after the death of C. his Predecessor, and alledged the Tenure to be by Homage, Rent, and to pay 40 s. for Relief after every death, and layed seisin therof by Prescription and speciall seisin by the hands of T. Abbot. the Plaintiff took the Tenure by protestation, and they were at issue upon the seisin, P: 8 R: 2. Reliefe 14.

An Abbot who is in by succession, shall never pay a Relief, by Wilby, because he is in by election, H:20 E:3. Relief 8. vi: P:3 E:3. 13. Reliefe 9. *verum est quia domus non moritur.*

Without a specialty granting, if a man shall never avow upon a man of Religion for relief, by Wilby, 20 E:3 Avowry 124.

But 17 E:3. 5. Collusion 22. An Abbot shall avow upon a Prior for relief, alledge Tenure and seisin without Deed.

X. Where a man shal pay two Relieves to one Lord for the same Land.

**T**he Father Tenant dieth seised, the eldest son dieth before entry or possession in fact, the younger brother being of full age shall pay two Reliefs, the one for the death of his Father, the other upon the death of



of his Brother, for he was also Tenant to the Lord, *tem. E: 1. Reliefe 22.*

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*XI. Reliefe where no Discent, and of a Purchasor.*

**A**T the Common Law, there was no Relief but by reason of a Discent to the Heire being of full age; but by Custome every Purchasor shall pay Relief (s) shall pay the double of the rent, and such Custome is in *Cornwall*: And if the Lord purchase the land, and alieneth the same again, the Custome is revived, where it runneth through the whole Country, and a man shall have relief by that Custome of his Alienee, as he shall have Heriot of his Feoffee, where there is such Custome; as *Schard* adjudged it in the case of Heriot, *14 H:4.3. Avowry 60.*



*License of Alienation.*

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*1. Where License shall be requisite for the Kings Tenant of Alienation, or for alteration of the Tenancy, and what License shall be good to do it.*

**N**Ote, in Affise, the Tenant shewed divers Alienations, and because the land was holden of the King, he shewed a License for every one, and shewed them in pleading: And that how one joynt Feoffee hath released to his Companion, and alledged also a License of Alienation of that, &c. *P:8 H:4.8. License. 1:*

If the King license his Tenant to alien, and afterwards it appeareth upon Record that that Tenant hath but tail, it is a void License, and the land shall be re-seised notwithstanding Livery made to the Heir as a Purchasor, by force of such License, for the King was deceived, and shall not lose to his advantage &c. *21 E:3. License 32.* and therewith agrees *40 E:3. lib. Aff:Pl:36. C.1. part,* in the case of *Alton Woods, acc*

The King licenseth his Tenant to levy a Fine of the Mannor of *M.* with Warranty, &c. unto the Earl of *Warwick*, rendring to the Tenant *100 l. per annum*: Now he could not levy a Fine of the Mannor, excepting, &c. rendring, &c. for by the License the whole Mannor shall be charged with the

the Rent, and the Fine shall not be received but according to the Licence in the whole, 30 E:3. 17. *Fines* 53. yet he need not levy a Fine, if he will, as it appeareth, 43 E:3. 34. but if he do alien it must be according to his Licence.

The Earle of Cornwall seised of a Mannor in tail, the Reversion to the King, exchanged with one C. in fee, and died without issue, King E. 1. being his Heire, and having other Assets of Fee-simple lands descended to him, as it appeared by Record by search, and the Alienation and the Title of the King found by Office; yet upon the Exchange and Assets pleaded by the Heire, the Exchange was awarded, and that he should retain the land against the King, 45 Aff:6. *Warranty* 68.

The King granted Licence to an Abbot that he might hold in Mortmain Lands and Tenements to the value of five pounds *per annum*, and he purchased the Advowson of a Church, at the next avoidance the King brought a *Quare Impedit*, and shall be barred if within the value, and if it be not holden of the King himself. for then such a generall Licence shall not serve to both intents. But it was said, that the Advowson was well comprehended in the Words, Lands, and Tenements, M:33 E:3. *Grants* 102.

The King gave Licence to W. to alien a Mannor and an Advowson, whereof the King himself was seised, for Alienation without licence, &c. And at the next Avoidance the King brought a *Quare Impedit*, and recovered, for it was said, that his lawfull seisin was not avoided by that Licence, &c. 33 E:3. *Grants* 103.

*Parn. faith*, That at the Common Law before the Statute, land holden of the King in chief, was not forfeited for an Alienation without licence, and faith, that that was adjudged of the lands of one Gower. *And Wilby* said, yet if lands holden of the King by grand Serjeanty are aliened without licence, they are forfeited to the King for ever, P:14 E:3. *Quare Impedit* 54.

But see, 9 E:3. 26. That lands holden of the King in chief were not forfeited at the Common Law by Alienation without licence, and that *Hank* said expressly, and that in the time of H:3. the Kings Tenant also might have Aliened his Freehold, as another Tenant might, 14 H:4. 3. *Why* 60.

The Executors of the Tenant of the King did alien by force of a Devise of their Testator, and there no Licence is alledged, 49 E:3. 16. *Devise* 8.

Note, there needeth no licence of Alienation of Land which is not holden of the King immediate, but by a mean, &c. 4 E:3. 1. *Quare Impedit* 33.



II. *Where License shall be requisite to charge Land holden of the King.*

**N**Ote, it was adjudged that the Kings Tenant may well charge the land holden of the King without license had, &c. 40 *Ass: 5. 9 H. 6. acc.*

But see 30 *E: 3. 17.* upon licence to levy a Fine rendering rent, he was not suffered to charge the land, but according to the words of the licence before.

III. *What Interest the King hath by Seisin for Alienation without licence.*

**S**Tone saith, when any land is seised into the Kings hands for an Alienation without licence, but that the King is not Tenant of the Freehold, but hath it only in the name of a Distress, &c. 4 *E: 3. 1. Quare Impedit 33.*



Livery, Seifure of the King, Traverse to an Office and Petition.

I. *Where a man shall enter and avoid the possession of the King without Livery, or Ouster le main sued, or other the like proceffe, where not.*

**W**Here the King taketh the profits of a man outlawed in a personall Action, and he sueth forth a pardon, he may enter into his lands without suing of Livery, by *Babington, 9 H: 6. 29. Livery 13.*

Note, by the Justices for Law, If I let lands to the Kings Tenant for life, after his death my entry is lawfull, and the land shall not be seised into the Kings hands: For the words of the *Diem clausit extremum*, are, *de qui-*

*quibus, &c. obiit seifitus in dominico suo ut de feodo, &c. H:14 H:4:32 I:14*

He who recovered lands against the Kings Tenant, gave the same to his two Sons in tail, the remainder to the same Tenant: Now although the Tenant dieth seifed and this dying seifed is generally found by Office, the Sons shall have. *Ouster le main simul cum exitibus*, shewing their right: As if I do enfeof the Kings Tenant upon Condition, and that is broken, &c. Also *Brian* and *Townsend* said, that the Son might enter before Office found. *Hussey* denieth that, because the King is intituled by the Office found, &c. 3 H:7.2. *Traverse* 12.

The King seifed of lands of a man attainted for the Peace, Day, and Waste, the land being holden of another Lord, this is found and the Lord after the year doth enter without any process of Law, by which the land is reifed, he shall be charged with the profits for his time, and put to sue for the lands in form of Law, 8 E:2 *Traverse* 48.

II. Where, and for what Lands and Tenements, Livery shall be sued, and how.

Note by all the Justices, that no man is bound to sue Livery out of the Kings hand of lands holden of him by reason of his Duchy of Lancaster, nor of no other land not holden of the King in chief, or of lands come unto him by reason of such lands, although they are in his Ward by reason of another Ward: But the Honours which are in his hands not rejoynd to the Crown, are in the same condition as they were in the hands of the Duke 28 H:6.14. *Livery* 14.

He that hath not an Office found for him, shall never have Livery, although he be found right Heir in an Assise, against the other Heir who is a Ballard, for that Record is void when the King is seifed by Office, by which a pardon of the King to him of all entry, is also void by *Martin*, vi. 2 H:6.5. *Livery* 35.

*Hussey* saith, If one be found Heire by an Office, and afterwards another by another Office, the King shall make Livery to the first, because he was first intituled by him, and the other shall have his remedy against him, 1 H:7.27.

He who sueth Livery first shall prove his age by men of two and forty years, and it shall be by signes and tokens: And it seems there need not be twelve of the Jury, because it is by proofs, 21 R:2. *Livery* 5. And he shall have a Writ to the Chamberlain to receive his Homage, and then to the Escheator to make Livery, 12 H:4. *Livery* 4.



III. Where Livery shall be sued by the heir in Socage, or by his friends, and where he shall not have it *cum exitibus*, nor before his age.

Note, it was said, if the heir female who holdeth of the King in Socage, sueth Liverie before her age of 14 years, she shall have it *mul cum exitibus*, but if she doth not sue it till after the age of 14 years, she shall have but a generall Liverie, and not *cum exitibus*, 35 H.6.32.

The King upon an Office found for him seifeth the Land of him, who in truth holdeth of him in Socage, and at the prayer of his friends, because he held no Land of the King in knights service, he shall have liverie with the issues, *si constare poterit* upon a writ to the Barons of the Exchequer, to search whether he holdeth not other land of him in knights service &c. because then the King hath no right to seise &c. 45 E.3. 19. Liverie 27.

Parn saith, that he which holdeth no land of the King in knights service, he shall not sue to have Liverie, but to have *Ouster le main*, 16 E.3. Liverie 29.

Note if a man holdeth of the King in chief in Socage, the King seifeth the heir, he ought to sue Liverie, and not *Ouster le main*, because the seizure was lawfull, otherwise it is if he holdeth of another in knights-service, for then he holdeth not of the King in *Capite &c.* T. 33 E.3. Liverie 1.

Note, if a man boldeth of the King in knights-service, and of other Lords in Socage, and dieth, his heir female within the age of 14 years, now he shall not have Liverie of the Lands holden in Socage, at the age of 14 years, for he ought to sue one in her liverie, by all the Judges, 35 H.6. Liverie 19.

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IV. Where the Heir shall have Liverie *cum exitibus*, of Lands in Knights-Service.

Note, after that the heir is of full age, and hath proved his age, the King of Right shall make him Liverie, and if the King deny it him &c. he shall have Liverie *cum exitibus*, after deniall upon request in Chancery &c. and a traverse tendred by another shall not stay the Liverie when it ought to be made, but of the issues mean after his age, and request to have Liverie, he shall have nothing, 1 H.7:27: Liverie 18.

C. Lit. 77: The Heir in Ward by reason of a Tenure in *Capite* at full age shall sue his liverie: But see C. 8 part in *Hulls Case*, when he tendreth liverie, and hath day for prosecution of it, and dieth, the interest of the King is determined, but if the heir of full age dieth without tender, the

the liverie is gone, but the King shall have the mean profits.

The King gave Lands to the Queen for life, the remainder to the lord Ferris in Tail, and after the death of the Queen, the King seised by office, which found, *W.* heir of the said Lord, who died before liverie, and his issue also died before liverie, his issue within age, the King aliened the land & in a *Mandamus* all this matter was found, and the Heir now prayed liverie, had a *Scire facias* against the Patentees, who did demurre, because none of his ancestors proved their age, nor demanded liverie, and it was adjudged that the plaintiff should have liverie, but no mean profits, because the seisure of the King was lawfull, and *Gascoigne* said, that the heir here might have sued liverie, and have put out the Patentees without a *Scire facias*, and the continuance of the Seisin of the King, nor the descent in the King shall not hurt the heir, when the first Seisure was for Wardship &c. 2 H. 7. 17. *Liverie* 23.

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V. *Where Liverie shall be sued out of the Kings hands for Lands not holden of the King, as of his Crown.*

**N**OTE, if he who holdeth of one who is in Ward of the King dieth, his heir within age, he shall be also in Ward of the King, and shall sue liverie, although he doth not hold of the King, 28 H. 6. 11.

*Thorp* saith, If the King seiseth a Ward, who holdeth of another lord, the heir cannot enter at his age without suing to the King, which was granted by the Court, 26 Aff. 57. *Liverie* 33. and See there, liverie sued of lands holden of an Honor forfeited to the King, where another was Tenant for life of that land, before the forfeiture and after.

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VI. *Where a man shall have his Land by Ouster le main without Liverie, and where una cum exitibus, where not.*

**H**E whose lands are seised, where he holdeth of the King in Socage, and no land in Knights-service, shall have an *Ouster le main cum exitibus*, 45 E. 3. 19.

Note, when the King is seised of the Lands of an Idiot, this is but in the Right of another, and a generall suing out of his hands, after the death of the Idiot, is sufficient without proceffe of Law, as by proof of his age &c. and Advowsons shall passe to the next heir without mention of them, T. 16 E. 3. *Liverie* 30.

Note by office, a woman was found joint-tenant with her husband the Kings Tenant, by which she had Liverie without finding sureties of marriage, 15 E. 3. *Liverie* 31. accordingly adjudged, 44 Aff. 35. and that she



the shall have Liverie *unacum exitibus*, and the King shall have no primer seisin, *Liverie* 11. 5 E.4.8. *Cook acc.*

The King was seised of Lands holden of him after the death of J. afterwards it was found by Office, that J. had but for life, the Reversion to H. by which a Writ was sent to the Sheriff to remove the Kings hands, by which H. entred upon the Committe of the King, but before a Writ of discharge he could not enter, notwithstanding an *Ouster le main* in the Chancery, because the Committee shall be charged with the mean profits, but there because it appeareth that the King hath not right to seise, the possession shall be delivered to no body, but a generall *Ouster le main* shall be, and that for the advantage of him who hath right, and his Freehold is affirmed by the possession of the King, by *Schard*, 10 E.4.2. *disse* 156.

Husband and wife Joint-tenants in fee, the Husband found guilty of the death of a man, was committed to the Ordinary as a Clerk attaint, afterwards he escaped out of the prison of the Bishop, for which the Land was seised into the hand of the King: and after the year and day, one J. sued the Land out of the Kings hands by processe of Law as chief Lord of whom &c. and the wife brought an Affise against him, and upon that matter found by record without any other seisin after seisure of the King, yet she could not enter upon the King, but ought to sue for the Land by Processe of Law, 5 E.3.47. *Affise* 166.

The King seised after the death of his Tenant, and it was found by office that he had but for life, the remainder to M. in Tail, by which he removed his hand, yet he shall have the presentment against M. which happened before the Ouster, because it was said, that he had right to seise and retein, untill M. sued for the Lands out of his hands, and doth him homage as he shall do after the death of a Tenant by the courtesie, 18 E.3.21. *Quare impedit* 150. Yet *Schard* said, when he hath no right to seise, but for servicces &c. he shall make restitution *cum exitibus*.

But see 24 E.3.7. *Quare impedit* 20. That Presentment is not comprised in the word Issues, for the Court said, that these are onely Rents and profits triable by the Escheutor, and for which he shall accompt, also monies in the King Coffers shall not be delivered by restitution of Issues, without especiall mention made thereof by *Wilby*, 24 E.3. *Quare impedit* 10. 24 E.3.27. *Quare impedit* 20. 27 E.3.81. *acc.* 6 E.2. *Presentment* 9.

It was found by Office, that the Tenant of the King in London died without heir, by which the King gave the Lands to P. for life, and a writ was to the Mayor, for to deliver him Seisin, who returned that the same Tenant devised the Land to his wife for life, so that she or his executors should sell the Reversion for his soul &c. and that this is enrolled &c. so as he could not make Livery. P. entred, and the wife had a *Scire facias* against him to have restitution, and upon the matter debated, the writ was abated, because he shall not have restitution without an Office found for

for him; yet it was said for the wife, that the return of the Mayor which stood with the first Office, and found her Title by Devise, and her Seisin of the Freehold, so as she could not have a Petition, should serve her for an Office; also the first suggestion of *P.* to the King was, that the Tenant was a Bastard, and died without issue, and the shewing of the wife was in no part contrary, so no traverse &c. and it was said, that she might well have an assise against *P.* because the King was never seised &c. *vi. 29 Ass. 13. Traverse 29.*

It was found by Office, that *A.* held of the King, and aliened to *J.* without licence, who gave the Land to *M.* in Tail, the Remainder to *R.* in Fee, and *M.* died without issue, and *R.* died, his heir within age, and *J.* found occupier, for which he was put out, and upon his Petition endorsed he did traverse that *J.* was never seised, and that the Land was not holden of the King, but of another, and by inquisition found accordingly, and that it was holden of *W. &c.* who held over of the King, &c. and that *T.* was seised by force of a Statute Merchant, acknowledged by Tenant in Tail, who is dead without issue &c. and although that by this it appeareth, that *T.* had no right to hold the Land, yet that was against another, and nothing to the King, but against him the possession which he had was sufficient to have restitution, and so was the opinion, *37 Ass. Traverse 35.*

The King granted the Ward of the Heir of his Tenant, After Office found came *A.* and shewed how the Tenant had but jointly with him, and had a *Scire facias* against the Patentee who did maintain the office, and it was found for *A.* for which cause he had Liverie *cum exitibus*, *10 H. 4. 2 Traverse 50.*

It was found that *T.* held the Mannor of *M.* of one *J.* by knights-service, and that he held the Mannor of *D.* of the king by rent, and yearly escuage of 10 s. the king seised the land, and let it to farm to *J.* untill it were decided, if by such Escuage it should be said knights-service, and hanging that, a Church appendant to the Mannor of *M.* became void, and the king thereof brought a *Quare impedit* against *J.* for notwithstanding the Lease, the king shall have the presentment, but the matter depending, it was decided that the Right did belong to *J.* and he had liverie *cum exitibus*, and upon alledging that, had also a Writ to the Bishop, for the presentment is the profit of the Advowson, *5 E. 3. 6. Quare impedit 34.*

It was found by office, *virtute officii*, that *A.* gave land to *R. Percy* in Tail, rendering rent, and re-entry for non-payment, and after a discent or two cast, the heir of the Donor did enter upon the issue in Tail for non-payment, and was seised untill disseised by the Earl of Northumberland, one of the issues in Tail, who was attainted by Parliament, and his lands given to the king, *salvo jure, possessione & legitimo ingressu cujusunque*, and that there the Earl died at Palmson field, and the Tenant made continual claim &c. and the opinion was, that the party might have entred upon.



upon the king by the Statute, or have had an *Ouster le main*, and that the Escheator should enquire of the truth of the matter, for the party *ante officii*, as well as he might by Writ, *M. 3. E. 4. 24. Office 1.*

It was found by Office, that *A.* had infeoffed the king to the use of another, for which the king seised the Land, and granted it over, and because the king could not be seised nor enfeofed to the use of another, and that Feoffment was not by deed enrolled, nor by no manner of Record, so as nothing passed to the king a speciall writ reciting the whole matter, was awarded to the Patentee, to remove his hands from off the Lands, and to deliver the profits &c. to the party, *5 E. 4. 7. Office 2.* *Markham* alledged there, that where the king had seised lands which were holden of him in Burgage, a *Supersedeas* was awarded to the Escheator: also he said, that if the Termor of the king dieth seised of land of which he was enfeofed unto the use of *A.* and his heirs, That if the king seiseth the lands, that *A.* or his heirs should have an *Ouster le main*, and *cum exitibus*. So the Survivor of Joint-tenants, by *Choke*, *5 E. 4. Office 2.*

VII. Where a man shall have an ouster le main by shewing of his Right without livery, where *cum exitibus* &c.

**T**He Fees, possessions and Advowsons of the Prior of *G.* were seised, because he was an alien &c. who came and shewed, that at another time his Lands were seised for the same cause, when he was Prior of *A.* and he had restitution, because he was born in *Gascoigne* &c. and now upon this matter a writ was awarded unto the Escheator to remove his hands, rehearsing how of his speciall grace, he had made restitution without speaking of the Advowsons, yet they did passe also, because the king had no Right, and thus the rehearsall of his grace, should not hurt the party &c. *27 Ass 48. Liverie 9.*

The Arch-Bishop of *C.* sued for a Ward seised by the king, and now Office found in the County of *E.* that the ancestor had but an assent of the king, and that he held the Mannor of *A.* of the Arch-Bishop in knight-service; yet upon that office he shall not have restitution, because there was another Writ sent to the Escheator of *N.* not returned, and there it might be found for the king, also it is not enough that he is Arch-Bishop, so the king should not have Prerogative of lands holden of him, because exempt by the Statute of Prerogative; for it might be that the Arch-Bishop purchased that seignorie of later time, also the king may yet be intitled to the body, and Liverie shall not be by parcells, but afterwards, because that divers of his Predecessors had had restitution in the same Case, and the king so willed now, he had restitution *cum exitibus* &c. *16 E. 3. Liverie 29.* it seems not of Right.

*P.* leaseth for life, and granteth the Reversion to *T.* the Tenant doth not attorn, *T.* re-granteth the land to *P.* and his second wife in taile, &c. the Tenant doth not attorn, the Tenant for life dyeth, *P.* dyeth, the King seileth *S.* the heir of *P.* by his first wife and the land, the wife hath Dower in Chancery, & after the death of the Joyntenant with her husband, hath the whole delivered, and dyeth, his issue enters, *P.* brings Assise, and upon this matter found, he did well recover without prayer, that the Land be resealed to the King, *Quare* if office had been found for the wife, 21 *E 3 1 Enrie congeable 40.*

The Earle of *Ormond* shewed in the Exchequer, how that the Earle of *Wiltshire*, whose heir &c. was seised of the Mannors &c. and forfeited them by attainder in the time of *Edward* the fourth, and he seised thereof in the right of his Crown, and afterwards *Richard* the third was seised in the right of his Crown, and afterwards he was attainted by the name of Duke of *Glocester*, and the Act of Attainder in the time of *Edward* the fourth was repealed by Parliament, and the heirs of the Earle of *Wiltshire* might enter and enjoy their inheritance, as if the said act of Attainder, had never been made: And shewed that it was found by commission upon the Attainder of the Duke of *Glocester*, that hee was seised of the Mannors, and they were seised into the hands of the King, and alledged in fact that they were the same Mannors &c. and that the Duke of *Glocester* was the same person who was king, and prayed an *Ouster le main*, and it was agreed that he should have it; for a Petition nor traverse doth not lye in the case, *M 4 H 7 7 Petition 12.*

A *Quare impedit* for the King against *T.* upon an office found of an alienation of a Mannor, to which &c. being holden of the King without license, *T.* shewed, how that the Advowson was holden of him, and upon that came the Treasurer, & shewed all that the Escheator had done, and seised for the malice of *T.* and that upon search he hath found the Mannor to be holden of the King, but that by two mesnes, wherefore he had not removed his hands: And the opinion of *Stone* was, that *T.* should have a Writ unto the Bishop upon this matter, and afterwards issue was taken, if the advowson were holden of the King as appendant, or of *T.* as in gross, 4 *E 3 1 Quare impedit 33.*

It was found by Office, that the Duke of *E.* was seised of diverse houses, lands, and tenements in *C. D.* and *V.* &c. and the King seised &c. and granted them to the Dutchesse of *E.* and thereupon came *W. Parry*, and *A.* his wife, and shewed how that at another time it was found by office, that the said Duke of *E.* dyed seised of the Mannor of *Grey* in *C.* which descended to the King, &c. and that afterwards the Earle of *N.* sued unto the King by Petition, for that he was seised untill by the sayd Duke disseised, and had Restitution, and gave the Mannor to *A.* and *B.* who gave the same to *W. Colt*, and he to the Plaintiff in taile, &c. and say that this Land, House, and Tenements are parcell of the Mannor whereof the first office was found, and of which the Earle of *N.* had restitution



tution, and it was holden that *Parrey* ought not to have been put out by the second office, but that a *Scire facias* ought to have issued for him against him by the Statute of *Lincoln*. And it seems so *Yelverton*. That upon this shewing he shall have livery upon the matter aforesaid, and that by the Common Law, and shall not be put to traverse, &c. 9 Ed. 4. 51 traverse 7.

It was found that *W* dyed seised of a Mannor holden of the King in chief in fee, and of another holden of the Arch-Bishop of *Canterbury*, in generall taile, and that *Alice* the daughter of *T* is his heir, whereupon came *R* and shewed that that Mannor holden of the Arch-Bishop was given to the Ancestor, and the heir males of his body, and that *Alice* is the daughter of *T*. son of the Ancestor, and that this *R* is his younger son, so heir by the taile, and holden he shall be admitted to traverse the office, because he doth not claim by the same title, as *Alice*, and he is to have an *Ouster le main*, and not livery, &c. 12 E 4 18 Tenures 8.

It was found by Office, That the Lord *Grestock* Tenant of the King, dyed seised of the Mannor of *D*. &c. 1 *G* his younger son came and shewed, how that the Dean of *G* and others did recover this Mannor, against the said Lord, and gave the same to the said *I G* in tail, the remainder to the said Lord according to his will, by which he was seised untill put out by office, without that, that the said Lord dyed seised, and prayed the land to ferme. *Hussey*, That he shall not have it, because that by his plea it shall be intended that the Dean &c. gave without license so intrusion, and the King shall have the profits, and the Plea was holden naught, because he had shewed his right, and also tendred a Traverse together, which are of diverse natures; for by the *Monstrans de droit* he ought to have alledged the same simple, and to have confessed the dying seised, and it seems, if he had shewed his right and relyed upon it, he should have *Ouster le main, cum exitibus*, by his title upon record, without any more, as he who enfeoffeth the Tenant of the King upon condition, and he breaks it, the feoffor shall have the Lands out of the Kings hands, by shewing of his right; &c. 3 H 7 2 traverse 12.

A *Scire facias* against the Patentee of the King of lands of his Tenant in ward for the feoffees of the Tenant to repeal the Patent by the feoffment to them made, without that, that he dyed seised; now the traverse upon this shewing, nor the Livery shall not be stayed, depending the same by an Office found for the King, but the King may well make himself a Title in barr by the matter found, as the Collusion of the Feoffment &c. 11 H 4 80. traverse 16.

VIII. Where Livery shall be sued by parcells, and where it shall be good by parcells, where not, and of what things.

Note, if three Coparceners be in ward of the King, and two of them coming to full age, they upon Petition in the Chancery shall have Livery of their parts of the lands, and all things which are severable, but not of advowsons, &c. because they cannot be severed, and therefore the King shall have all them, 38 H 6 9 Livery 16.

Where the heir sueh livery of parcell of the land seised into the Kings hands, the same is void, and all shall re-seise, and the King shall be answered the profits, and the party pleaded a pardon by Parliament, 2 H 4 17 Livery 23. and of the re-seisure, and the profits answered to the King agreeeth 44 Edw. 3. 25. Livery 26. where all was re-seised &c. by mention not made of the advowson in the Livery, yet that advowson was never seised into the Kings hands, 44 Ed. 3. 12 Livery 15. where he sued Livery in one County, and all re-seised.

It was found by Office, that the Kings Tenant dyed, his heir female being within age, married to a man of full age, and that a stranger had abated into parcell of the Lands, the residue seised into the hands of the King, the husband and wife sued Livery of that, not making mention of the Land of which the abatement was, and the opinion was, that all should be re-seised, for all the Judges say, if the heir of the Kings Tenant at his full age, doth recover in a *Mortdancester*, against the abator, yet the Land shall be seised, and he sue Livery, but the abator shall answer the King for the profits, 12 R. 2. Livery 28.

The Arch-Bishop of *anterbury* had Livery of a Mannor, as Lord which was seised into the hands of the King, being found not holden of the King, notwithstanding that another Office was to be found in another County after the death of the same Tenant, and the Writ not yet returned; but that seemed to be *Ex gratia Regis*, vi. 16 E 3 Livery 29. For *Parn.* saith there, That livery shall not be made by parcells, as not of the land of the Lord, if not also of the body; and that cannot be until as the Enquests are returned, because one may serve for the King: And said, That in the case of Dower or partition, nothing should be done until all the Enquests returned.

If the youngest son be found Heir in one County, and the eldest in another County, none of them shall have Livery, but he which is the very heir, ought by Commission, or other Writ, finde himself heir in each County, otherwise hee shall not have livery, for no livery without an Office, and that shall be for the whole land, &c. *Hill.* 1 H: 7. 14 Livery 17.



*Hussey* saith, That Livery shall be made of the whole, and he of two which are found heirs by severall Offices, who is found Heir by the first office, whether he be right heir or not, shall have Livery, and the later Office shall not stay him, but the other may have good remedy against him by Entry, or Action, 1 H 7 27 Livery 18.

XI. How Livery shall be made when two are found heirs to one man, and when, and how they shall interplead.

**N**Ote, Three sued to have Livery of one Mannor out of the Kings hands, which was seised by three severall Offices, as heirs to three severall men, and each shewed cause by himself. *Tirwith*, It hath been adjudged where diverse sue to have Livery, as heir to the same man, that they interplead, and so it seems they must do here, and afterwards hee was awarded to answer for the King, 7 H 4 4 Livery 22.

*Babington* saith, That if it be found in one County, that *B.* is heir to *D.* and in another County that *C.* is his heir, now they ought to interplead, and the King shall not make Livery before, 9 H 6 18.

The Duke of *Lancaster* gave lands to *B* who had issue *R.* who had *H.* and *J.* *H* entred and had issue *M* Bastard, &c. *M* was found heir to *H* the Duke seised the ward and committed him over; the Duke being now King, *I* entred upon the Patentee, *M* within age did re-enter, *I* brought an Assise and recovered upon the matter found before, the King did pardon him all entries, *M* was found heir to *H.* his father by *mandamus* *I* had issue *R.* who is found his heir, and that he held of the King, *M* proved his age, and *R* his age, and prayed livery severally, and it seems if livery shalbe that it shalbe to *M.* because the King seised in his right, so of right he is bound to make him Livery. and the office found for him is not defeated by the recovery in the Assise, and so the Pardon void, by *Martin* and *Paston*, and interpleading cannot be, because each is Actor against the King, by *Cheney*: But *Babthorpe* the Kings Attorney held, that no Livery should be made, for *R* shall not have Livery, because he hath not traversed the Office found for the same &c. and he said, that *M.* should not have Livery, because his right was defeated by the recovery, so the King not now seised in his right, for he sayd that that heir who is found Bastard at the suit of a stranger, is concluded to sue Livery; *Quia* if that stands with the Reason of *Martin* and *Paston*, vi. 2 H. 6. 5. Livery. 33.

It was found by office, that *F.* Tenant of the King dyed, and that *I* is his next heir of full age, and by another Office that *S.* is his heir within age, whereupon *S* prayed, that the Land might remain in the Kings hands untill &c. *R* prayed Livery and said, that he himself is heir, and that *S* is younger by another woman, and *S* was put to answer the same pro-

ently, although that he was within age, because each is an actor against the King, *P 36 E.3. Traverse 44.*

Huffey said, That in this case next before, that hee of full age shall have Livery presently, and shall not stay untill the other cometh of full age to interplead, and if both be found within age, he who first cometh of age should have Livery, &c. *Pasch. 9 H. 7. 12. Livery and Traverse*

49. See *5 E.4.4* contrary to these books, and that he of full age shall not have remedy untill the other cometh to his age, and then to interplead, *Traverse 6.*

The King made Livery to him who was found next heir upon debate at the proving of his age, and the other brought cosinage against him upon the death of the same Ancestor, and the opinion was, that he should be stopped by the tryall before, yet the same was but an Enquest of Office. But *Spigg Justice* said, that it had been seen, that tryall in the *Diem clausit extremum* upon a Counter-plea of the parties in the place of Mortuor, *M 5 E 2 Estoppel 255.*

X. How the eldest Son shall come to have Livery, where the youngest is found Heir, and how his Heir, if he dye within age.

If the youngest son be found heir, no remedy for the eldest before office also found for him, and then at their full age, they shall interplead, as in all cases where diverse heirs are found by diverse Offices, and if both have issue and dye, they within age, several *Devenerants* shall issue forth; and they shall interplead at their full age, but if the one dyeth without issue, so as the other is his heir, he shall have Livery at his age, without more ado, *1 H 7 14 Livery 17.*

Note, It is said, where livery is to be had out of the hands of the King, if the youngest Son be found heir by *Diem clausit extremum*, the eldest shall have no remedy, because they claim by one and the same title; and he cannot traverse his own Title but wherethe son claims by way of Remainder, or otherwise shews special tail to the heirs Males, and that that daughter which is found heir to her father was daughter to his eldest brother; there he may wel traverse the office because he is to have *Ouster le main*, and if the speciall matter had been found by Office, the King ought not to have granted, &c. *M 12 Ed.4 18 Traverse 8.*

See *1 H 7 14 Salyard* saith, That the eldest shall have a speciall Commission for to find him heir, when the youngest is found Heir by Office.



X I. *Where Livery shall be made to him who is found Heir by Diem clausit extremum, where to him who is found Heir by Mandamus, where by Devenerunt:*

**T**He King shall make Livery to him who is found Heir by Writ, who it be of Right or wrong, and never to him bath not an Office found for him, 1 H 7. 14.

King Edward the third granted a Reversion after the death of his Mother, to the Lord F in tail, all found by office after the death of his Mother, the Lord dyed before livery, and his son also, King Richard granted the land to a stranger, the new Lord sued a *Mandamus*, and found heir by mean degrees to the first Donee, and vpon that sued a *Scire facias* against the Patentee, and awarded that the land should be released, and that he should have Livery, but no mean profits, because the King had right to seise, 7 H 4. 17 livery 23.

Office which found that A held of the King in taile, without shewing of whose gift, or what manner of taile it was, 15 H. 7, 6. Office 4.

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X II. *Where Livery shall be to him who is found heir by Office, depending a Traverse to the Office not decided.*

**N**Ote, when the heir is found within age, and now of full age proveth his age, and prayeth livery, or being found of age prayeth Livery, or doth all that he ought to do, the Roy in right shall make him livery, and shall not stay him by traverse of a strange man who is not found heir also, or tendreth interpleading, or otherwise is Lord, and traverseth the Tenure of the King, 1 H 7. 27 livery 18.

Upon one point traversed found against the King, livery shall be made notwithstanding other titles depending that be found for the King, 13 H 4 6 livery 2.

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XIII. *Where Livery shall not be made to the heir, the seisure being in his Right, but a stranger shall have Ouster le maine, where not.*

**B**Abthrope saith, If the King seiseth the ward of one within age, and afterwards another Ancestor dyeth, and a stranger abateth, and the Infant bringeth an Assise of *Mortdancer*, by which he is found bastard, Now he is concluded to have livery, and the King shall retain the land, until

untill the right Heir sueth for the land out of the Kings hands: So if I  
found heir where my eldest brother was entred into Religion, and de-  
signed before livery, &c. by *Rolf*, 2 H 6 5.

The Reversion of land holden of the King, was granted in taile to T.  
and his wife, who dyed without having Attornment, the land is seised,  
the wife had the third part for her Dower in Chancery, and after livery of  
the two part as Joint-tenants, and dyeth, his heir being in upon whom  
the heir of the grantor entred, and well without Release, because the  
possession of the King doth remain, so no descent, 21 E 3.1 entry conge-  
neable 46.

Note *Schard* saith, When the King seiseth for cause, as for Nonage  
of his Tenant found, &c. Now in due time he ought to make livery to  
him, in whose right he entred: But if he seiseth Tenements where he  
hath not right, as his Tenant had not but an Estate for life, in them,  
although he dyed seised in fee, of other lands holden of the King in cheif,  
there he shall remove the Kings hands without livery. And note there,  
That when the King seiseth all the land of his Tenant by reason of par-  
cell found to be holden of him in cheif, of that parcell he is seised in the  
right of the heir found, but of the rest in the right of him who hath the  
best right, H 10 E 3 2.

XIV. Where the Possession of the Committee of the King shall be  
avoided, and when the possession of the KING shall be layd  
void.

*Schard* saith, That the Committee shall be always charged with the  
profits untill he hath a Writ of *Ouster le main*, although the King hath  
out of his own hand, before in the Chancery, & therefore entry upon him  
before such writ of discharge, is an abatement upon the king, notwithstanding  
the *Ouster le main* in the Chancery: *Hill Serje.* expressly to the con-  
trary. And the Judgment in Chancery shall excuse the entry upon the  
Committee, and also shall discharge her Committee of the profits after-  
wards, *vi. Fitzher.* doth not abridge the saying of *Schard*, H 10 E 3 2.  
*Assise* 156.

Land was seised as upon a dying, seised of the Kings Tenant, whereas  
intruth a stranger hath recovered the same land. and gave it to the se-  
cond son of the Tenant in taile, the remainder to the Tenant in fee; and  
agreed now, Upon this matter, by way of *Monstrans de droit*, the son shall  
have *Ouster le main cum exitibus*; although the Tenant had the land at  
the time of his death. And *Townsend* and *Brian* conceived, that the son  
might enter before office found. But *Huffey* denied it, because the King  
is intituled by the dying seised of his Tenant, 3 H. 7. 2 *Traverse*.

XV. Where



XV. *Where Livery shall be made to the heir within age, notwithstanding a Grant made to a stranger of the Land by the KING, where to the Heir of full age, and without process against him who hath the Land.*

**N**ote by *Hulls*, If the King grant land which he hath by reason of Ward to one, *Quam diu in manibus nostris fore contigerit*; now if he make livery to the heir being within age, this is good, and he shall put out the Grantee: Notwithstanding such grant, *M 8 H 4 17*. But if the grant be *Durante minori etate*, then the grantee shall hold the land, until his full age, notwithstanding the speciall livery within age, *3 H. 7. 3.*

Note by *Gascoign*, If the King alien over the Land which he hath in ward, yet the heir at his full age may well sue Livery, and put out the alienee, without any processe of Law against him, *Vi. 7 H 4 17 Livery 23.*

XVI. *Where Coparceners shall sue Livery jointly, and where they shall sever in Livery.*

**H**EE or those of the Coparceners which first come of full age upon a Petition in the Chancery. shall have livery of their portions of the land, not of the Advowsons or things which are entire, *38 H 6 4.*

Where foure Daughters were in ward as one heir, T. the eldest now of age had one Mannor extended, and delivered to her for her part, afterwards the middle daughter, and the third being of age, the middle sued garnishment against the eldest, because she had more then her part; because her Mannor was extended at twenty pounds *Per annum*, was of the value of eighty pounds, *Per annum*, and this was found before the Escheator, & although this was but an Inquest of Office, and although the Mannor was delivered to the eldest for her part, and although the third was not made party to the suit, yet all was reseised, and re-extended, *H 2 E 3. 20. livery 8.*

See all this agreed, *13 E 1 Itin. North, livery 6.* That those which are first of age upon suit shall have livery, and all shall be re-extended at the suit of the other now of full age, if they have more than they ought to have, or at their request, if they have lesse, so that each may have that which doth belong unto them.

XVII. *Where Lands or Tenements or Advowsons shall pass by Livery without expresse mention. &c.*

**N**ote, Where the King was seised because the heir was found a Sotte, that after his death, generall Livery to the next heir is sufficient for the Advowsons &c. without expresse mention, because the first seisure was generall of all lands and inheritances of the Sott, &c. 16 *Edm. 3 Livery 30.*

Note, that an Advowson appendant alwayes passeth to the Heir by livery of the land without mention &c. Also if an Advowson in grosse be seised by Writ, which speaks generally of Lands and Tenements without mentioning of it as it well may be, it shall pass unto the heir by the like generall Livery, because by the same process, and in the same degree: But if a woman sueth the same out of the Kings hands for Dower, or one Purcener for her part, there they ought to have expresse mention of it, because by another processe then it was seised, &c. *Mich. 5 Edm. 3. 66 livery 7.*

An Advowson was seised by generall seisure, of lands of a Prior, Alien, and upon finding that he was born in *Gascoigne*, a generall restitution being made, it was agreed by the Justices, that the advowson should also pass without mention of it, 27 *Ass. 48. livery 9.* But a Presentment fallen in the time of the King shall not pass by such generall restitution, as the temporalties of an Abbot seised, for refusing the Varlet of the King to a Corody, being found to be of his Foundation and the King pardons him all Occupations, Intrusions, Contempts, Injuries, and Trespasses, and restores them as whole as they were at the time of any of his predecessors, yet it was adjudged, that the King should have the presentment which did fall in the mean time, because there was no expresse mention made of it, *P 46 E 3 Grants 50.*

But if the restitution hath words, viz. So that he can have no right claim by the Seisin before, with mention of the Advowson, the Presentment shall also passe, 9 *E. 3. 26.*

The King seised after the death of him who in truth was not but Tenant for life, and upon that matter found removed his hands from the land; and a Writ to the Escheator to deliver the profits, yet the Heire shall not have the Presentment, if the King hath presented before the removing of his hands, without expresse mention of it. Also it was said, that by Livery of the Issues the Presentment did not passe, because it is not to be levied by the Escheator, no more then the monies which are paid into the Kings Coffers before, *T. 24 E. 3. Quare Impedit 10.*



XVIII. Where Lands shall be seised into the hands of the King, after the death of his Tenant by the *Diem clausit extremum*, &c. and what shall be a cause of Seisure.

**N**Ote, by all the Justices for clear Law, If I lease lands unto the King Tenant for life, after his decease I may well enter, and the land shall not be seised into the Kings hands, for the *Diem clausit extremum*, is to enquire of what lands he died seised in his Demesne as of Fee: And said, that the usage which had been to the contrary was naught, 14 H. 4. 32. see 10 E. 3. 2. *Affise* 156.

The King shall seise the lands of the Heir of his Tenant which is found within age in one County, in all Counties. and he ought to sue Livery of the Lands in every County specially, 44 E. 3. 22. *Livery* 25. And 44 E. 3. 25. agrees, where an Office of Land was adjudged sufficient for the seising of Advowsons in grosse.

If a stranger abate into parcell of the Lands of him who holdeth other Lands of the King, and dieth, his Heire within age, and this speciall matter is found by Office, the King may well seise: So if the stranger continueth seised during the Nonage, and the Heir at his full age recover by *Mortdancestor*, yet the King shall seise, and the Heire shall be driven to sue Livery of the same, 12 R. 2. *Livery* 28.

Now after the Prerogative made, it is sufficient cause for the King to seise all the land of him who holdeth parcell of him in chief; but if any parcell of it be holden of the Arch-bishop by purchase, before the Prerogative, he shall have Livery *cum exitibus*, because exempted by the Statute, 16 E. 3. *Livery* 29.

If he which holdeth of A. as of his Honour of H. by Knights-service dieth, his Heir within age, and afterwards the Honour cometh to the King by forfeiture, yet he shall not seise the Ward because the Heire is his very Tenant presently, and he shall not have another Tenant, 26 Aff. 37. yet it is agreed there, that if the King seiseth without cause, as of Land being holden of another, yet the Heir at his full age, shall not enter without suing to the King.

All the Justices said, that when Land is seised into the hand of the King upon an Office which found the Tenant Joynt-tenant with a stranger, that this was as no Seisure, and that the Land shall not be said in the Kings hand. Also it is no cause to seise, when it is found that the land is holden of the King in Burgage, nor when it is found that the Tenant was enfeofed to the use of a stranger, by *Markham*: And *Choke* said, That if the Escheator seiseth land for the King upon an insufficient Office, *virtute officii*, he is a Disseisor, not where it is *virtute brevis*: And the principall case was, that the King had seised and granted land upon Office, finding that A and B. his wife had enfeofed the King, and that to their use, and holden

holden that the Feoffment was void, because no Record, and also the use, and that it is no cause to seise, for which cause a speciall Writ was awarded to make restitution. 5 E:4.7. and 7 E:4.10.

A Mannor was seised into the hands of the King, after the death of his Tenant who held other land in chief, and in the Deed he had not but an Estate for life in that Mannor, and this was found by Suit of him in the reversion. But if it had been found by the first Office, and notwithstanding Livery *cum exitibus*, the King shall have the Presentment mean, not expressed in the *Ouster le main*, T.24 E.3. *Quare Impedit* 10.

Where the Ancestor held parcell of the King, although the other lands are in the possession of others, which hold of them, yet the whole shall be adjudged alwaies in the Kings hands, and the Heir ought at his age to sue all out of his hands, by *Markham*, which all the Justices agreed in the Exchequer Chamber, 2 H:4.13. *Voucher* 50.

The Lands of him who is found to be aidant to him, which was, or is the Enemy of the King, shall be seised into the Kings hands, but he may traverse the Office, 44 Aff. 18.

It is a good cause of Seisfure for the King when the Heir is found Ideot from his Nativity; also the King may well seise the land holden of him in chief, being aliened by his Tenant without licence, without suing Garnishment against any one, 32 Aff. 28.

The King may well seise a Terme granted to the husband and wife, by the attainder of the husband. 32 Aff. 33.

Land seised by attainder of B. where in truth he had the land but in the right of his wife, was well restored unto the Heir of the wife upon a Petition and warning given, the Heir of the Patentee being in by discent, 33 Aff. *Traverse* 34.

If an Abbot recover in a Writ of Entry *ad terminum qui prateriit*, supposing a Lease to A. where in truth the Lease was to B. and this speciall matter is found in Affise between him and another (s) the Feoffor upon Condition, there, although the right of the Abbot be found in a *Quale jus*, yet the King shall seise the land, because he had not right by that Action, 44 E.3.8. *Entry congeable* 35.

Note, the Kings Tenant may well alien Land holden of the King in Knights Service, as of an Honour without licence, and the King shall not seise unlesse that Honour was in ancient time parcell of the land of the Crown, 42 Aff. 6. *Traverse* 24.

Tenant for life aliened, the Reversion being to a Fool-naturall, and this was found by Office, for which cause the King well seised the land, 29 Aff. 43. *Livery* 10.



XIX *Where the King shall seise the Land without Office, where not, and where the party shall have traverse to the Cause of the Seisure, where not.*

IT was ordained by Parliament, that all the Lands of T. Earl of Kent, whereof he was seised in fee the day that he made insurrection against the King (in which he was slain) should be forfeited, his Heir in Ward of the King, and now of full age, sued forth *Mandamus*, by which it was found that T. was seised of a Mannor in tail, and of that the Heir prayed Livery: And the opinion of *Markham* and *Gascoigne* was, that he should not have Livery, if the *Mandamus* was not well awarded. And *Markham* said, that upon every seisure for forfeiture that the king was seised in fee, and then as in no case where he claims in his own right, *Mandamus* shall not issue forth. And *Gascoigne* said there, that the Lands of none are seisable into the kings hands, before that he be attainted, *40 H. 4. 32. Livery 21.*

Upon suggestion in the Chancery, that the Lord *Clifford* being Tenant in tail of the gift of the Ancestor of the king, had purchased Licence of the king to enfeof two, and to take back the Land to him and his wife in tail, the remainder to his right Heirs in Disceit, &c. and now his Son in Ward of the king, and upon such suggestion, a *Scire facias* was awarded against the wife, and two partes seised, and she charged with the Issues during her occupation of the two parts, and the third part was recouped for her Dower, *40 Aff. 36.*

S. leased for life and was attainted, now the Reversion is in the king, so as a *Superfedeas* was granted to the Tenant against him who sued Execution of a Statute incurred before the Title of the king, and after the death of the Tenant the king seised, &c. Note here that the Case was, that the king being seised by the forfeiture of S. should have the Lease, *M. 9 H. 4. 5. Petition 15.*

Upon a *Scire facias* for the king upon an Office, finding the Heir of his Tenant Ideot, and that A. had the Land, he claimed by Feoffment of the same Heire, when he was of good memory. This is cause enough to seise without any Garnishment, if within the year, because he hath confessed the Tenure and alteration without license, *P. 32 E. 3. Scire facias 106.*

The king may well grant the Wardship of Land, to which he hath right before Seisure or Office found for him: But if he expresse the grant of the land seised, which is not seised, all is void, *10 H. 4. 2.*

The king enters into Land holden of him in chief, after the death of his Tenant without Office, &c. *M. 2 E. 2 Estoppel 253.*

By *Hussey*, the Grantee of the king may well enter for non-payment, &c. without any demand, but he said, the non-payment ought to be found by

by Office, otherwise he shall not enter, 2 H. 7. 8. *Prerogative* 10.  
By judgment that the Temporalities of an Arch-deacon shall be seised for a Contempt, the king shall be said, seised, without any more: And of Advowsons, although no expresse judgment of it, 21 E. 3. 30. *Scire facias* 113.

XX. Where the King shall seise without Writ, where not, and where he shall not seise by Office without Writ.

Note, an Advowson is in the King presently by the Office upon the death of his Tenant without more. So if it be found by Office that the Tenant of the king is dead without Heir, or that he hath aliened in Mortmain: But if it be found that the Tenant hath cessed, or done waste, the king ought to have a *Scire facias*, &c. so if the king hath made Livery to one, and afterwards another Office is found for the king, &c. the party shall have Traverse in the *Scire facias*, 14 H. 7. 21.

Where the king grants land over, depending a Petition of it by a stranger, and it is found for the stranger, the king may well seise the land, &c. without any Writ to warne the Patentee, 13 E. 3. *Brief* 260.

*Scire facias* for the king upon a recovery in a *Quare Impedit*, abated for want of matter; So it seems the king hath not actuall Seisin without warning, 18 E. 3. 22. *Brief* 356.

The king shall not seise lands as forfeit for Treason by Office found, without *Scire facias* against the Ter-tenants, 18 E. 3. 26. *Brief* 360.

The king seised lands granted by him by Patent, obtained in disceit of him and the prejudice of another, but not without warning the party, M. 17 E. 3. 39. *Petition* 21.

The lands of him who is found a Fool-naturall shall not be seised against a stranger Ter-tenant of them, without warning of him; but upou an Alienation found without licence, the king shall enter without any more, &c. P. 32 E. 3. *Scire facias* 106.

The king seised upon an Office found of the Seisin of his Father, & being found by petition that his Father had not but by disseisin, he made restitution. And it was now found by another Office, that the Father died seised of Land, Meadow, Rent, &c. in C. where the first was of the Mannor of G. in C. And the opinion was, that the king should not seise the land without warning of the party, for it was holden all one, when a later title is found for the king by the last Office, and when Title before, &c. that is to say, that he ought to give warning in every case, by the Statute of *Lincoln*, 9 E. 4. 51. *Traverse* 7.

See where upon the like restitution, being after a Charte: found in the Treasury, by which the party had enfeofed him, who he supposeth had seised him, the king did seise without more, M. 24 E. 3. *Traverse*



*Green* saith, that the king may well seise lands holden of him without licence aliened within the year after his Title, without any suit, to which the Justices agreed, 29 *Aff.* 30. *Traverse* 28.

Upon Office found, that *T.* Tenant of the king in *London*, died without Heir, the king granted the land to *B.* for life, this was good: And he who claimed by the Devise of *T.* driven to sue to the king, 29 *Aff. Traverse* 29.

No seisure of lands of the Debtor of the king dead, being found by Office in the hands of strangers, without processe against them, 32 *Aff. Traverse* 33.

Upon a suggestion in Parliament, that the Purparty which was betwix the husband of his Mother, and others, was not equall in value, and that a stranger had recovered parcell, &c. the one Mannor was seised with processe against any, and assigned to him who made the suggestion, &c. 42 *Aff.* 22. *Aff.* 349.

When the king makes Livery upon an Office which is not sufficient, he shall reseise without any *Scire facias* sued, which he shall not do for another right found for him, if the Office were sufficient, *P.* 13 *E.* 3. *Liverie* 3.

XXI. Where the King shall be presently in possession by Office found, and n here not before entry upon it.

**T**He King is possessed of an Advowson presently by the Office found: So of land aliened in *Mortmain*, and where his Tenant dieth without Heir, by *Mortdant*, *H.* 14 *H.* 6. 21 *Livery* 34.

And the Office alone shall make Title for the King to present, 21 *E.* 42. whether it be to an Advowson appendant, or in grosse, by all the Justices, and the Patron out of possession by the Office found for the King. And see 17 *E.* 3. 10. the opinion of *Thorp. acc.* But *Schard* contrary, and that he shall not be out of possession by the Office, but it is sufficient to bring the Avoidance in question and debate, and there it is said, that this is the common opinion of an Advowson in grosse.

*Choke* saith, That if an Abbot bring *Darrein presentment*, and it is found for him, and the Collusion is also found, the King shall have a Writ to the Bishop without more, 21 *E.* 4. 3.

Upon Office found for the King after the death of his Tenant he granted the Ward without more seisure, 9 *H.* 4. 6. 10 *H.* 4. 2. *Traverse* 30.

The King shall seise lands holden of him being aliened without licence, without any Suit within the year, 29 *Aff.* 30. 32. *Aff.* 28. *acc.*

It was found by Office that *H. S.* who forfeited to the King, was seised of the Mannor of *D.* and leased the same for life to *J.* saving the Reversion and that *J.* is dead, and now *T.* is Tenant, by which the king shall have a *Scire facias* against him. (so not seised by the Office) 40 *Aff.* 24. *Traverse* 23. XXII. Where

XXII. Where the King shall reſeiſe and make Liverie upon it, and what ſhall be a cauſe of Reſeiſure.

**N**ote, That in every caſe where a man ſues Liverie of parcell out of the Kings hands, and of parcell not, all ſhall be reſeiſed, 7 H. 4. 17 So where he ſuerh Liverie in one County, 44 E. 3. 12. Liverie 25.

Alſo 7 H. 4. 17. The King being ſeiſed during the nonage of the Lord Ferrer his ward, aliened in fee; the Lord now of age ſued a *Scire facias* againſt the Pattentee, (but note that he needed not to do) and adjudged that the Land ſhould be reſeiſed, the Patent repealed, and Liverie made.

The Lord Burgh ſued liverie without making mention of an Advowſon in groſs, which alſo was not ſeiſed into the Kings hands, and awarded, that all ſhould be reſeiſed, 44 E. 3. 25. liverie 26.

Note, If a man be found heir to the Kings Tenant, where he is not heir, and hath liverie, and afterwards by another Office, the true heir is found, Clapton ſaith, That the Land ſhall be reſeiſed, which was denyed by many, and that oftentimes it had been adjudged that no reſeiſure ſhall be where they are of full age, but if within age, ſome colour ſhall be ſet, and the principall caſe was, That a ſtranger abated into parcell of the land holden of the King after the death of his Tenant, whoſe heir female was married within age to a man of full age, and now they have liverie of the land without mentioning that in the poſſeſſion of the Abator, and by the opinion all ſhall be reſeiſed. Alſo if the heir recover at full age in a *Mortdancerſter*, yet the King ſhall ſeiſe, 12 Rich. 2. Liverie 28.

It was found by Office, that J. H. had liſenſe to alien land holden of the King, and to take back the ſame to him for life, the remainder to G. H. his eldeſt ſon and M. his wife in taile, &c. upon which G. H. and M. had liverie thereof out of the Kings hands, and afterwards it was found by an Ancient fine in the Treasuery, that J. H. had but fee taile, ſo the King was deceived, and the liverie holden void, and all was reſeiſed &c. T. 21 E. 3. liverie 32. 40 Aff. 36. acc.

George Talbot ſued by Petition for lands ſeiſed into the Kings hands by colour of a forfeiture, and his right found by a ſpecial Commiſſion, and that the Anceſtor did not forfeit any thing, and hanging this Suit, the King granted the land over to three, and now ſued a *Scire facias* againſt them, and two of them appeared, and ſayd, that the third is dead; yet it was holden, that the land ſhould be reſeiſed. For Wilby ſayd, that the King might well have reſeiſed without ſuit, 13 E. 3. Brief 260.

The King gave leave to his Tenant to alien and take back the Land in taile, he aliened to two upon condition accordingly, and dyed before taking back, the King ſeiſed his heir for other lands, and upon a *Scire facias* againſt the feoffees, it was awarded that thoſe lands ſhould be ſeiſed.



sed into the Kings hands, yet they shewed especially; how that they were ready in the life of the Tenant, and had delivered his wife dower, and yet are ready to make the estate to the heir, if they may have a new license, *H 19 E. 3. entry congeable 39*

*Mordant* saith, If the King maketh livery to one, and afterwards an Office is found for the King yet he shall not re-seise, but he shall have a *Scire facias*, and the party shall have his traverse, &c. *14 H. 7. 21. See 30 Aff 31. traverse 31.* where one daughter found heir shall have livery, and by another office is found also Co-heir within age. Now a *Scire facias* shall be awarded, and all the land re-seised, notwithstanding a special taile alledged to the Father and Mother of the first daughter, because that Taile was not found by the Office, but generally that she was heir.

The Land of a Felon holden of another, was re-seised after the King had the year, day, and waite, because the Lord entred without process of the Exchequer, *8 E 2 traverse 48.*

### XXIII. What shall be layd Intrusion upon the Possession of the King, and where abatement.

**I**F a man recover land against the Kings Tenant by his assent, and afterwards he dyeth seised, and he who recovereth entreth and maketh estate according to the will of the Tenant, the same is intrusion upon the possession of the King, although it be before Office found, by *Hussy Townsend* denyed it, because here the King is not entituled to have the Wardship upon the matter, so by him, and with him the opinion of the Court seemed to be, if he had shewed it only by *Monstrant de Droit*, without traversing the dying seised as he did, as I may well enter after the death of my feoffee upon condition, who was Tenant of the King for condition broken, and it is no intrusion. And *Brian* agreed with *Townsend*, that the dying seised after the recovery shall not hurt. *Hussy* contrary, and the King is intituled by it, See the book, *3 H 7 2 Traverse 12.*

Note by *Gascoigne* and *Hulls*, If a stranger abate upon the possession of the King, where he is seised by the nonage of the heir of his Tenant, That yet the free hold doth remain to the heir, because the possession of the King cannot be devested by such Abatement, *8 H. 4. 17. Traverse 14.*

Note, Continuance of possession of him who was Joynt-tenant with the Tenant of the King, who was attainted, is no intrusion upon the King, otherwise it is of the wife of him who was attainted, where they had a Term for years in joynture, &c. *32 Aff. traverse 33.*

XXIV. Where the KING shal be answered the mean Profits, and by whom, and where another person shall have them.

Where a stranger abates after the death of the Kings Tenant, and before any office found, yet the King shall be answered the profits from the time of the death of his Tenant, 3 H 7 3.

It was found, that a man outlawed of felony had land; whereof he had enfeofed T after the Outlawry; and now T came ready to traverse the office, because a stranger, and of that the Court would advise, because the outlawry was of record, but the year and waft was seised for the King, and T shall answer him for the profits past taken, &c. 49 Ed. 3 1 r traverse 19.

Where the King recovers lands by the Forfeiture of any, he shall be answered the profits from the time of the forfeiture, and as it seems of every one for his time, and where the one parcener hath the land in partition, she prayed that her sister might be charged *Pro rata*, because she had other lands in the place of them, 40 Aff: 24. Traverse 23.

The King shall have the mean profits of their lands which were adherents to his Enemies, &c. 43 Aff: 28.

The King was answered the mean profits against the Lord of whom, &c. who entred after the year, day, and waste of the King, without due profits of Law to the Escheator, and the land resealed, 8 E. 2. Traverse 48.

If the Heir now of full age recover in a *Mortdancer* against the Abator, yet the Abator shall answer unto the King of whom, &c. all the mean profits from the time of the death of the Ancestor, *quod nota*, for the Heir also had recovered damages before, &c. 12 R. 2. Livery 28.

The King shall be answered the mean profits, by forfeiture against the wife Joynt-tenant with her husband during his life, &c. 26 Aff: 57. Live: 733.

Where the Bishop leased parcell of the Barony of the Bishoprick, rendering forty pounds *per annum*, and afterwards by the assent of the Dean and Chapter released thirty pounds, &c. upon that found (which is a forfeiture in Law) It was awarded that the King should be answered forty pounds for every year, and of every one for his time (s) of the Lessee for the years for which he had not a Release, or discharge, &c. H: 46 E. 3 forfeiture 18. And see there that the King took but a Fine of the Bishop for the forfeiture.

The King licenced his Tenant to alien and to take back he alieneth, and before the re-foffment made, dyeth his Heir within age, and in Ward of the King for other land, upon this matter found, the land shall be sealed, and the King answered the mean profits from the death of the Tenant, H: 19 E. 3. Entr. conge. 39.

When



When the King giveth leave to his Tenant to alien, as to hold in fee, whereas he hath but in tail, this is void. and he shall be answered the profits from the Alienation: But where he took back the land to him and his wife, she shall answer but the two parts, because she had right before to have the third part for Dower, 40 Aff 36. *Guards* 1.vi.21 E: 3. *Livry* 32. ac.

Where a man shall lose his land by Disceit in the Sheriff, as where he makes no summons, or returneth him summoned, who was dead, &c. and the party is to have his land again upon it. *Herle* said, that it should be good Law, that he should have the mean profits: But the Law is, that the King shall have them. &c. 8 E: 3.6. *Disceit* 7.

Where the Disceit was found of not summons, and the land restored, he prayed also restitution of the mean profits, *quod tota Curia negavit*, T. 50 E. 3. 18. *Disceit* 32. 13 R. 2. *Disceit* 34. acc.

Upon Disceit found, the party shall have his land again back, and damages, and the King the mean profits, and the cause is, because at the Grand Cape the land shall be taken into the Kings hands, P. 12 R. 2. *Disceit* 33. and with that agrees, P. 2 E. 3. *Disceit* 46. where *Herle* saith, that the Writ of *Disceit* commands the Sheriff for to seise the land into the Kings hands, and that he shall be charged with the profits in his Account upon the Disceit found, &c.

But see 12 E. 2. *Disceit* 53. where upon the Disceit found, the party had his land with the profits in the mean time without damages. Of the profits agrees, 17 E. 3. 12. *Disceit* 36. and P. 43 E. 3. 32. *Disceit* 27. and 41. E. 3. 2. it was adjudged, that the party should have the profits from the day of the Execution unto that Writ. *Candish*, The King shall have the profits after the Writ brought. *Thorp*, The same hath not been seen before now.

The king grants the Bayliwick of a Forrest in fee, rendring rent, and afterwards he grants the Forrest over, the Bailly is attainted, the Grantee of the Forrest occupieth the same, he is chargable to the king for the rent and the arrearages, for that was made in grosse by the Grant, 26 Aff: 60. *Grants* 74.

The king granted a Market to one, *Proviso*, that it be not to the Nuisance of another, and afterwards it was found, that it was to the Nuisance of the Market of the king in D. &c. Now the Letters Patents being annulled for that, the king shall be restored also to the issues and profits also taken by the Patentee, in the mean time, by *Hulls*, for cleer Law, which was granted, M. 11 H. 4. 5. *Judgment* 69.

If a Bishop seisseth lands purchased by his Villain (which is not lawful if it be not descended to the Villain.) *Belknap* said, That the land shall be seised for the king, and he shall be answered the profits after such entry of the Bishop M. 41 E: 3. 21. *Mortmain* 5.

Note, the king shall be answered the profits of the land recovered by an Abbot from the time of the Judgment, untill the Collusion tryed, although

though that the Title be found for the Abbot, 20 H:6:38. Office of Court  
and this is by the Statute of West.2. cap. 32.

Where the king sueth a *Scire facias* for the lands of B. which is a fool  
naturall, although that B. dieth, depending the writ, yet if he were a fool-  
naturall, the king shall be answered the mean profits, and the lands seised,  
for otherwise the king cannot make delivery to the next Heir as he ought,  
M:18 E:3. *Scire facias* 10.

He who is indicted of felony, takes the Church, and flies from thence,  
and in pursuit was slain, the king shall have year, day, and wast, and the  
mean profits, 3 E.3. *Itin. Corone* 290.

The Sheriff shall be charged with the profits of the lands of him who  
was presented to have killed another, and now hath his pardon, as well  
for those after the Charter of pardon, as before, 3 E.3. *Corone* 108. See of  
that 4 E.2. *Corone* 374. and that although it be the land of the wife of  
him who was indicted, because he is alive.

**XXV. Where Interpleader shall be by two, when they are to have  
Ouster le main, and of Enterpleader in a Writ of Ward.**

**N**O Enterpleader but when both are of full age, and each hath an  
Office found for him, 1 H.7.14. vi. 43. *Aff.* 10. *Traverse* 25. that there  
shall be Office for each of them, otherwise they ought to traverse.

Where one prayeth Restitution of his land seised upon Office found  
that he was adherent to the Kings Enemies, which he traverseth, and ano-  
ther prayeth livery of the same land by Patent of the King, &c. the Pa-  
tente shall have the Livery, and the other shall try his Traverse with  
him, and it was found for him, for which he had Restitution, 43 *Aff.* 28.  
*Traverse* 26.

In a Writ of Ward by two severally, they enterpleaded. But *Paston*  
said, That yet it behoves the Defendant to excuse himself of the wrong,  
that he took him for cause of Nurture, 19 H.6.3. *Enterpleader* 7.

And the Enterpleader shall be in proper person, and though that all  
appear at the first day by Attorney, it shall not be commanded to the o-  
ther Attorneys to have their Clients there at the day: but they shall ap-  
pear upon *Scire facias*, and not otherwise, per *Curiam*, 30 E:3. 5. *Enter-  
pleader* 56.

Where there were two Plaintiffs, and the Defendant said, that he claim-  
ed by Nurture, &c. *Thorp* commanded the Attorneys that each of  
their Clients sue *Scire facias* of the other, to be here to enterplead; and  
afterwards the wife did surmise that a stranger had another Writ, &c. and  
although by such means the delay might be infinite, yet day was gi-  
ven over. *Thorp* said, that he who recovereth shall have damages against  
every one who declares, 31 E.3. *Enterpleader* 13.

Where the Defendant pleaded only as Guardian for Nurture, he must  
have



## Grants of the King.

have the Infant ready, &c. 24 E. 3. *Enterplead.* 17. and it is no excuse that the Infant lyeth sick in danger of death, or that he otherwise cannot come, *M.* 24 E. 3. and the Heir shall remain with the Defendant till the controversie be decided, 7 H. 5. 9. And if one make default, the other shall have the Infant delivered to him, 8 E. 3. 45. And it is a good Counterplea of Enterpleader, that the Infant is married, 8 E. 3. 45. 7 E. 2. *Grants* 121.



## Grants of the King.

1. *Where the Grant of the King before time of memory is now good, and shall be pleaded against the King, or parties, with Confirmation.*

**T**He Charter of King Henry the first was alledged to prove the Shop of Exeter Patron of the Priory of Plimpton, where it was of a Grant made *Canonicis quos 7. Episcopus de E. posuit*, and it was not allowed, because it was no direct proof of the foundation. Also it was averred for the King, that the Soil upon which the Priory was built, was given to Chaplains, &c. before the Priory made: And there was no Charter of the King of expresse grant of the Patronage shewed, &c. 38 *Aff.* 22, *Grants* 1. See that that Charter was before time of memory, and not challenged for that:

The Abbot of *Glassenbury* had Conusans by a Charter of William the Conqueror, with Confirmation of Hen. 1. and alledged allowance in the Common Pleas, in an Assise in the time of King E. 3. 12 H. 4. 13. 14 *Aff.* 14.

And 12 H. 4. 23. It is holden that the Grant of the King is of Record, and therefore shall be well pleaded, although it were made before memory if he were King at the time, *Avowry* 58.

And 7 E. 3. 5. Appropriation alledged by a Charter of William the Conqueror, and nothing challenged, but that the Appropriation by the Charter of the King is nothing worth, 39 E. 3. 21.

But 10 E. 4. 6. and 2 E. 4. 21. It is agreed, that the Charter of the King nor no other Record made before memory, is nothing worth now. And therewith agrees 8 H. 6. 4. and 19 H. 6. 75 by *Newton*. Notwithstanding allowance in the Common Pleas, where it was never allowed in Eyre, and that it ought to be allowed in Eyre, See 24 *Aff.* 24. And that Confirmation in Assise shall not be granted without a speciall Grant and allowance.

See 3 E. 3. *Itin. Not.* Charter of Hen. 2. to be quit of Pontage, Murage, and admitted good.

*Skreen* saith, That the King shall not be received to avow against the Deed of his Ancestor, which was before time of memory, 12 H. 4. 24.

A Charter of Exemption of Jury, or of Conuſance before time of memory, is not good, without a ſpeciall allowance, &c. by *Paſton* and *Jane*, 14 H. 6. 12.

## II. Where the Grant of the King ſhall be good by the words *Ex gratia ſpeciali mero motu*, &c.

See 2 H. 7. 13. Where the King rehearſing the Statute of *Mortmain*, Grants to *J. S.* that he may give ten pounds rent *Cuidam capellano*, not naming him; alſo there was no Chantry before, yet the rehearſall, the ſpeciall words, and the Conſideration (s) the Grant for twenty pounds proved his Will; ſo a ſufficient Warrant to the Grantee to endow the Chantry and to give the Annuity, but he cannot grant it with *Diſtreſſe*.

9 E. 4. 12. The king recited, that *Baggot* was born in *Normandy*, (whereas he was born in *France*) made him *Denizen*, and the Patent good, notwithstanding the falſe recitall, for his intent was to make him *Denizen*.

*Choke* ſaith, That if I be indicted, and the King pardons me by the name of *T. B.* where my name is *T. E.* if the Charter be *ex mero motu*, I ſhall have avail of it by ſpeciall pleading, which I ſhall not have if it be *ad instantiam partis*. *Brian* held both void, becauſe the king is deceived in his Grant, 21 E. 4. 48. So alwaies for non-certainty the Grant of the king ſhall be void notwithstanding thoſe words: See there, where the Conſideration alledged in the Grant ſhall be averred: and where it is matter of Record, a thing to be done, and for the advantage of the king, *vi.* 26 H. 8. 1.

Note, the king may well ſay againſt his Charter of Confirmation, which is *ad instantiam partis*, &c. that there was no ſuch precedent Grant, but where the Confirmation is, *Ex mero motu*, he ſhall be eſtopped, 9 H. 7. *vi.* 8 H. 7. 3. *acc.*

## III. Where the Grant of the King ſhall be void to all intents, and where to parcell, and what things the King may grant, and what he may not, which ſeem doubtfull.

**K**eever ſaith, If I hold two Mannors of the King, the one in chief, the other in *Socage*, if he give me licence to give them in *Mortmain*,  
G g g g 2 without



without reciting of the Tenure, yet if the Charter hath the word *gratia speciali*, this is good for both, but otherwise it seems it had been void, as to that which is holden in chief, for the great mischief &c. *19. M. 33. E. 3. Grant 103.* That such a generall licence shall not serve, if it be holden of the king in chief.

Note, where the King granted to the Bishop of *S.* that he should not be impeached, nor charged of Felons and Thieves, escaped this is void where the escape is voluntary, and good where by negligence, for that which is but in *pœna pecuniaria* may be remitted and dispensed with by the king before it be done, as a Grant to the Tenants of a Town, that they should not be amerced for not apprehending of Thieves, *3 H. 7. 15.*

The King granted to the Earl of *Northumberland*, that he should be Sheriff of *N.* for the term of his life, with all offices to the same appertaining, rendring 100 l. without accompt or any other thing rendering, the opinion of the Justices was, that the grant is good, with a *Non obstante*, for the Statute of *23 H. 6. cap. 3.* and that he shall have the offices incidents, and that he shall make no accompt, if not of the Great way, but he shall accompt for that, *2 H. 7. 6.*

*Hussay* saith, That if the King grant to me all Fines and amercements of his Tenants in *D.* yet I shall not have the amercements of such which held of the King and others, because he is not wholly Tenants to the King, also such generall grant shall not extend to amercements royall, *2 H. 7. 6. 22 Aff. 49.*

Note, that the grant of the King to be quit of repairing of Bridges, Causeys and walls, shall be a good discharge of Contributions and Taxes for the reparation: also it shall be a good discharge of Murage and Portage &c. which is taken of the passengers to a Town, but where it is charged by reason of Land, or a Seignorie, or otherwise, time out of mind &c. to make a Bridge &c. he shall not be quit of that, no although he hath been acquitted of the same in a *Quo Warranto* between the King and him, for that was not at the costs of the party, so it shall not help him upon a presentment &c. *3 E. 3. Itin. North. Assise 445.*

The Grant of the King, which is contrary to the liberty of the Kingdom, is void, as the Grant to the Chancellour of *Oxford*, that he should not be impleaded &c. but he may alter the place of impleading by Grant, but not the subjection to the Law &c. without Parliament, *8 H. 4. 12 E. 4. 19.*

Grant of the King of Conusans &c. is void, where there is not certain Judge appointed in the Charter there, *44 E. 3. 1 Ch. 4. 1.*

A Grant in derogation of the people is void by *Hank. 12. E. 4. 1.* Grant of the King of Land, of which he is not seised in fact, is void, of the Lands of a man outlawed in Trespasse, yet of those Lands he has the profits, *9 H. 6. 20. vide 10 H. 4. 2.*

But see *13 H. 4. 7.* that the Land of a man especially attainted by Parliament, is in the king presently to grant.

Where the king grants an office, naming it, where as there was no such office before, this is void, 13 H.4.17. 9 E.4.6. *Bagots Affise*, 8 E.4.8.9.4.12.

Grant of an office to him who hath not skill to use it, it is holden void by the Justices, as the Office of Clerk of the Crown, 9 E.4.6. by *Billing*.

*Vide C.11. part Auditor Curles Case*, a grant of an office to two, conjunction & Division of an Office, if one dies; the grant is void.

Also Grant of the office of Preignothorie, and the like, made to two jointly, is void, for that but one shall keep the Rolls, 18 E.4.7.18 E.4.17. of a Corodie, *vide Curles Case*, acc.

See by *Littleton*, if the king make a Confirmation to him that hath an office before by a void Grant, all is void, because the king intended the first grant was good; the same law is of a new grant of the king, where it hath such intendment, as if he grant upon a false suggestion, or is otherwise deceived, 11 E.4.1. 9 H.6.18.

Note, by *Gascoigne*, that the Grant of the king which is not good; without taking away the Common Law, shall be void, as if he grant to Mayor, Bailiffs, to hold plea by Charter, where they have used to hold plea time out of mind &c. by writ. It is said, that this acceptance of the Charter shall bind them, 8 H.4.18.

The king reciting that *H.* held of him in chief, granted to *T.* that at that time *H.* should die, his heir within age, that he should have the Wardship of him. and at the last, the grant was holden void, as every such grant before office, by the Statute of 18 H.6., but it was said, that that Statute was made in aid of them who were ousted by such grants and injuries, and not for the advantage of the king, *Grants* 91 30 H.6. *Keble* held such Grant, of the Ward void, 21 E.4.46. See 19 H.6.62. by *March* contrary.

But the king may well grant a thing which he hath not, nor never shall have, as Offices, 1 H.7.29 Franchises, liberties, Toll and the like, 13 H.4.17.6 E.3.32. So all such things which are in him by Law, by reason of his Crown, but he cannot grant unto another to do that which he himself cannot do, but onely by his Prerogative, as to make Corporations, for he cannot grant his Prerogative, nor his Crown, 49 E.3.2. nor for parsons, felonies, 1 H.7.5.43 *Aff. 10. Vide C.9. part. the Abbot of Strata Marcellas Case* acc.

A charter of exemption from Juries; and to collect Tithes is good, so long as there be enough to be Jurors, and to be Collectors above the grantees, otherwise not, and such grants; shall be Charters of discharge more properly then of Grant by *Fitzherbert*, who voucheth the opinions.

*Upton and Ilston*, 20 H.6.13, 21 E.4.45.

And see 13 H.4.18. that the grant of the King being in charge of the people, shall be good; where it is for the Common wealth, although there be no such before, as Toll, Pontage &c.

The King granted a Rectorie &c. and that he &c. shall be discharged of



of Tenths and Fifteens, and granted to him by the same Charter to appropriate three Churches, *Quare*, if these shall be discharged, 19 H. 6. 63.

Note that the King may well grant things in action which are certain as a debt &c. otherwise not, 5 E. 4. 10. vide 3 H. 7. 9. 19 H. 4. 7.

The King granted unto the Citizens of London, that no battels should be waged against them, and in an appeal by a Citizen after the battell waged, the Charter was shewed for the Citizens, and the Justices would advise of it, 20 E. 3. *Corone* 125.

The Tenant of the King, before the Statute of *Quia emptores* &c. aliened parcell to hold of himself without Licence, the King seised the Land and rendred the same to the Feoffee to hold of him, it was void, as to the Tenure, because the King hath not any Freehold by the seisure, 20 E. 3. *Assise* 122.

Generall Rules  
of the Kings  
Grants.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.

So see upon these grounds, that a generall Charter of the King, which comprehends divers things, shall be void in that part, which is the greater losse to the King &c. or in that which is a grater offence of the party, or in that which is of another nature, and imports greater Priviledge, or in that which is prejudiciall to many, or in that part which is to be a charge to the Kingdome.

The Grant of the king shall be void in all, when a stranger is prejudiced by it, and that by covin of the party, and where it is in prejudice of the people, and when it is against the Common law, *Vide* 11 H. 4. 74. C. 11 part in the Case of the Monopolies, 13 H. 4. 13. acc. 21 E. 4. 47. *Redman*.

And when the principall thing granted was not before, and when the King is not seised in fact or in Law, nor hath expectance to have the thing, and when he is deceived in the manner of his Title, or otherwise, and when the thing granted is parcell of his Prerogative, and when by such Grant the Ordinary execution of the Law is taken away, and when it is not certain, *Vide* 21 E. 4. 28. C. 11 part, the Earl of *Devonshires* Case. acc.

The king cannot grant that to two which one alone of necessity is to do, nor that to one which he knows not how to use, as an office &c. Nor that which is his Prerogative.

Doubtfull  
Grants.

- 1.
- 2.
- 3.
- 4.

The Grant of the King is doubtfull if it be good or void, when it hath two entendments or constructions, when the thing granted is not in the king, when the party hath not the thing at the time &c. by which he ought to take advantage of the Grant, And note, that the king himself shall have the construction of his doubtfull grant, 8 E. 3. 2. also the grant is doubtfull where it wants expresse words according to its nature; as Advowson claimed by word in a Charter of possessions, vide 39 E. 3. 21. 17 E. 3. 40. and for a good construction of a doubtfull grant of the king, See the books of 6 E. 3. 52. and 12 *Ass*.

IV. Where the Grant of the King of amerciaments &c. by these words, *Coram quibuscunque Justiciariis nostris &c. or in quibuscunque Curii nostris, shall be good.*

The King granted to the Dutchesse of H. *Insulam habend. simul cum amerciamentis &c.* (good, as to that after the *habendum*) *omnium gentium & tenentium, resident. & non resident.* and the opinion was, that she should not have amerciaments nor issues forfeited in the Common-Pleas &c. but these forfeited and lost within *infra Insulam*, 9 H. 6. 27.

Note, that by speciall words, the King may grant to me to have amerciaments in the Lands which I or my heirs purchase after, 38 H. 6. 10.

Hussey saith, that if the King grant to me Fines and amerciaments which fall before his Justices, and doth not say before which Justices, it is a void grant; 21 E. 4. 48.

The Grant of the King of the Chattels *felonum & fugitivorum, qualicunque damnatorum*, doth not extend to the Chattels of him who kills the Kings Messenger, because that in a manner doth touch the King himself, as high Treason doth, 22 Aff. 49.

Soe there the Grant of Conuſance generally, doth not draw Conuſance in an Affiſe, and the Grant of Return of Writs generally, doth not give return of ſummons of the exchequer.

Note Strange and Babbington say, That if the King grant to me Conuſance of all manner of Pleas, *motis coram quibuscunque Justiciariis suis*, Yet I shall have Conuſance of no Plea, which of Right doth belong to the Kings Bench, because it is of a higher nature, 8 H. 6. 21.

V. Where the Grant of the King shall be void, and adnulled by default of the Grantee, in a Scire facias against him, where by Non-suit, and where by Judgement.

THE King seised a Ward upon an Office, and granted it to B. and afterwards came one H. and traversed the Office, and had a Scire facias against B. who being returned warned did not appear, for which it was agreed, that his Charter was void, also agreed that H. having the Land until the matter such be discussed &c. being nonsuit upon the traverse in the Kings Bench, his Patent is also void, 4. E. 6. 22. Traverse 1.

In a Scire facias to repeal a Patent granted upon Office found &c. the defendant prayed aid, and at the *procedendo* said nothing &c. for which the Court said to the Plaintiff, that he should sue a *Procedendo ad judicium*, 8 H. 4. 31. Scire facias 61.

Upon



## Grants of the King.

Upon default of the Patentee, being returned warned at the *Scire Facias* upon Petition to repeal the Patent, the patent is void, 17 E.3.57. *Petition*.

See the opinion of the Justices, 4 E.3.22. That where the party upon his traverse tendred, hath the Land to farm by the Statute, 25 E.3. and it is adjudged that the Traverse doth not lie by this Judgement, the Patent is void, *Traverse* 5. *Quare*, if the King shall be restored to the profits by such avoiding &c. for where the Patents are repealed for default within them, and he shall have the mean profits, *vide* 11 H.4.5.

VI. *Where the Grant of the King shall be good for that thing which cometh after the Habendum, although it be no parcel of the thing granted before, where not.*

**T**HE King grants to E. *Insulam*, and a Castle *cum pertinentiis, cum amerciamentis, et exitibus, advocacionibus* &c. It is a good grant for the whole, 9 H.6.27.

The King seised of a Mannor with an Advowson appendant, leaseth the Mannor for life, and by another Charter reciting that Grant, he grants the said Mannor *Habendum una cum advocacione* Ecclesiæ &c. the clear opinion is, that the Advowson doth not passe, because it was severed from the Mannor by the first grant, 38. H.6.34.

See 8 H.7.4. Holden by all the Justices, that this clause *una cum* being before the *Habendum* is a copulative &c. and if it be after the *Habendum*, it shall not make any thing for to passe, which is not parcell nor incident to the thing granted before.

VII. *How the Kings Grantee of Fines and Amerciaments shall come to levy them.*

**T**HE King grants Issues, Amerciaments, *Omnium residenti & non residenti* &c. and further that the Grantee may levy them *Per se vel suos*: And it was agreed that by the last words the Sheriff shall be charged for them upon his account; but it should not be to buy the Counts without these words, but he should be charged, and the Grantee shall sue by Petition, for such a Grant lyeth in Allowance of the Sheriff's accounts, 9 H.27.

VIII. *Where*

## VIII. Where the King shall avoid his Grant for cause of Reseifure given unto him.

IN a Writ of right in ancient demesne, the Tenant pleaded a Lease of the King for life, the Title was found for the Demandant, and also the Lease found accordingly, for which the Escheator seised the Land, the Demandant upon his Petition shall have a writ to deliver seisin, to hold of the King by the ancient service, according to the Custome of the Mannor.

46 E. 3. Petition 20.

If the King grant Land whereof a stranger hath services due, the grant shall be to hold of the cheif Lords, &c. otherwise upon a Petition the Land shall be reseised, and the Patent repealed, 46 E. 3. Petition 18 19. vi. 17 E. 3. 59.

See 23 H. 6. 7. The ground taken by *Prisor*, where the King hath Land by soccage, as Treason or for Mortmain, and the grants are *Tenend. de capitalibus Dominis, &c.* they shall be holden as they were before. So it is said, 46 E. 3. Petition 18. That when he doth not give it accordingly, it is no lawfull Patent, because it is a wrong to the mean Lord.

## IX. Where the Grant of the King to one and his men shall be good, and which shall be said his men.

If the King grant to me, that I and my men shall be quit of Toll, the same Grant shall extend to me, my men, Villains, and Homagers, by *Papworth* and *Tune*, 14 H. 6. 12. and that they said upon a Grant at this day.

But see 40 Aff. 21. Where it was awarded, that a Prior could not have the goods of his Tenants Fugitives by Charter of Grant of such goods, *terminibus suis*, if the Charter had not been granted before time of memory, and executed by usage to have the goods of his Tenants, &c. otherwise he should not have, but only of his Villains there.

See, 33 E. 3. Grants 88. That a Grant to me and my men shall extend to Villains and Homagers, by *Wilby* and *Schard*, and 12 E. 3. *Conningsburgh* 18. it is only of Homagers, by *Schard*, and *Hill*, and not to Villains; and if the King take me and my men into his protection, it shall not extend to Villains: But *Parn.* and *Trem.* say there, that it doth extend to Villains also.



X. Where the Grant of the King shall be good, because he may by possibility have the thing granted, and where it is good of a thing which he cannot have, &c. and where not.

**T**he King grants to one to be discharged of Fifteens and Tenth, &c. to be granted; this is good to a spirituall man, or a temporall, for the certain expectancy, 19 H. 6. 62. 21 E. 4. 48. So a grant to me that my Heir may enter without suing Livery, or that I shall not be punished in a Cessavit; for a Cesser to come, all is good, 19 H. 6. *ibid.*

See 33 H. 8. Dyer 52. The King may dispenche with things to come, in which he hath an Inheritance, as Subsidies, &c. *vi.* 6 H. 7. 5. *ac.*

So the King grants to me twenty pounds to take of the Collector of the next Fifteens, this is good by *Choke*, 21 E. 4. 48.

So a Grant to be discharged of Collection of Tenth and Fifteens, 30 H. 6. 12. 21 E. 4. 48. See 30 H. 6. *Grants* 1. If the King grant to me the Ward of the Heir of *J. S.* when he dieth, &c. the same is not good, but if he grant to me the Temporalties of the Bishop of *S.* the Bishop being now alive, this is a good Grant. So the grant of Goods of one indicted of Felony after that he is outlawed, for it is said, the King is seised of them in Law, and of Issues, Amerciaments, and Goods of Fugitives, &c. But if he grant the Escheat of his very Tenant, or the land which his Villain shall purchase, this is void by *Vampage*, 30 H. 6. 21 E. 4. 46. *by Kelle*, *vi.* 8 Eliz: Dyer 252, Sir William Cordalls case, *ac.* C. 1. part 5c. *ac.* 2 Mar. Dyer 108. *ac.* 2 Eliz: Dyer 278.

The King granted to the Mayor and Bayliffs of *Lynn*, that they should be Toll-free throughout all *England*, and if any took Toll of them, that they might take as much, &c. within their Jurisdiction in *Wishernam*, &c. it was a good Grant, H. 8. R. 2. *Grants* 105.

The king cannot grant some things which himself may have, as he cannot grant to a Corporation to take advantage of the old statute of Forestalers, for the wrong done to their City, but the same shall be determined in Eyre, *M.* 3 E. 2. Action upon the Statute 26.

So of all things touching his Prerogative, as he cannot grant to his Tenant that he shall not hold of him, &c. 8 H. 7. 12.

The king grants to me that I shall not levy a Fine upon a Concord, or that I shall not be impeached of the next Recognition which I shall make him, or that I shall have the next Recognisance made to him in the Chancery, this is a good Grant; by *Hoddy*, 19 H. 6. 64.

*XL. Where the Grant of the King made of Tythes to a Common, or spirituall person is good.*

The king grants the Tythes of the new Assets, in a Forrest to one P. and the Grant good. And the king shall have the Tythes of the place out of any Parish, for to grant them to whom he pleaseth, and not the Bishop. 22. Aff. 73. But the opinion of Herle, 7 E. 3. 5. that the Bishop of the place shall have them.

See 8 E. 3. 6. and 42 E. 3. 22. That Tythes by being granted to a common person, are become temporall; And also that the right of Tythes is not gone by unity of possession of the land out of which, &c. in the person and reoffment over, 42 E. 3. 12. vs. C. 11. part in Priddle and Napier case.

*XII. Where a grant of Liberties and Franchises, which I, or my Heires have purchased, or shall purchase, is good, and to have Leets of all Resiants: And where void for the incertainty.*

The king granted to the Mayor and Bayliffs of Lancaster, that they should have all the Franchises and Liberties, which the Bargeses of Northampton had, and because the Charter did not expresse the certainty of the Franchises; and it was not shewed upon Record what Franchise Northampton had, the Charter was disallowed in a Quo Warranto, 20 E. 3. 19. Avowry 129. C. 9. part, the Abbot of Strata Marcellas case.

The king granted a Leet of all the Tenants and Resiants in W. where he had leased the same Town to a stranger for life before, and granted him a Leet: And Thorp said, That the second Grant is void but during the life of the Termor. And Green saith, Where the first Grantee hath Seisin of the Coming of the Resiants, where his Grant is void or determined, yet the second Patentee ought to sue to repeal his Charter, or otherwise the Resiants are not discharged of their Suit, 32 E. 3. Avowry 112. and 7 E. 4. 11.

A Grant of a Priviledge or Liberty in omnibus terris suis, extends only to the Lands which the Grantee hath at the time, but if the Grant go further, or in all lands which he or his Heirs shall after purchase, it is good for them also, 20. 38 H. 6. 10. the like liberty granted for their Goods 20. 6. 62.

A Patent of King Henry the fifth, bare date at Burdeaux in France, assigned good 38 H. 6. 34. But see, it was confirmed by the King and Parliament.

XIII. Where



XIII. *Where the Grant of the King of the Lands of Priories, &c. in Fee, is Fee-simple.*

**T**He King granted to the Earl of S. in the time of War, the Advowson of a Priory, with Fees and Advowsons, &c. And his Heir brought a *Quare Impedit* against the Successor of a Church now void, who alleged Plenarty. It was debated, if that were a plea against him who claimed by the King, 29 E. 3. 2. *Quare Impedit* 189.

See 13 H. 4. 13. Where a Prior Alien being Committee of his Priory in the time of War had aide of the King in a Writ of Right (that was not as is conceived, for the Fifteens of his Estate, for then that Writ did not lye against him. So *quare* of the Grant in Fee in the first case) Set for the interest of the King by such Seizure, 17 E. 3. 2. 46 E. 63.

XIV *Where the King grants a Reversion, it passeth from him by the name of Reversion.*

**T**He King leaseth a Mannor for life, and after reciting that lease, grants to a stranger, that the same Mannor, &c. after the death, &c. shall remain to him, &c. this is good. Also it had been good if he had granted him the Reversion by expresse words, 38 H. 6. 34.

The King cannot grant the Reversion of an Office which another holdeth for life, by name of Reversion, for he hath no such Reversion, but he may grant such Office by a speciall recital of the particular Estate, 3 H. 7. 15. 8 H. 7. 12.

The King may grant the Reversion of Tenant in tail without Attornment, 12 E. 4. 3.

XV. *Where the Grant of the King which was void, shall be made good by Confirmation of Parliament, and where by the Kings Confirmation.*

**A** Man makes a Lease for years, and is attainted, being beyond Sea at the time of the Judgment, the King granted the Reversion to a stranger, and the Tenant attorned, and afterwards the King by his Charter did restore him according to Law, and granted that he should have his Lands and Tenements back again, &c. And this Charter was confirmed in the Parliament, and he granted the same Reversion to a stranger by Fine, who brought a *Quid juris clamat* against the Tenant, and he was driven to attorn without warning given to the Grantee of the King, for although

although the Attainder was good, and the Charter of the king but as a  
 Pardon, and his Grant of the Reversion perfect before, yet by a speciall  
 Confirmation of the Parliament, this was a good restitution of the land,  
 64 E:3. 32. Grants 100.

See where the king doth confirm a void Grant of Cognisance made by  
 the Queen and Prince: And further granted the same thing, &c. it was  
 good by way of Grant, although the Confirmation was worth nothing,  
 44 E:3. 17. So was it admitted in the case, 20 E:3. Cognisance 46. Of Con-  
 firmation of the King. See 11 E.4.1. 39 E:3. 12.

*XVI. Where the King shall grant a thing in Action, or his Debt  
 to another.*

The king may well grant a thing in Action, and the Action where it is  
 of a thing certain, as Debt, but not Trespasse, &c. 5 E.4. 10.

On Obligee being outlawed, the king shall have the whole Obligation;  
 And if he grant the same to a stranger, and to sue the same in the kings  
 court, all is good, 19 H.6. 47. and see 2 H: 7. 8, 9, and 10. where the king  
 may grant a thing in Action.

*XVII. Where the King grants Liberty within all his Fees is good,  
 and what shall be said his Fee.*

The king granted to one Estray within all his Fees, it was holden by  
 Northham and Littleton, that the same did extend unto Lands holden  
 in Frankalmoigne, for that is his Fee, because a Writ of Mesne, and not  
 by the vexes lyeth against him: Also the Feoffee of the Abbot shall hold  
 of the Donor; Also he shall have Escheat by determination of the house,  
 with the death of all the Monks, which Choke granted, 7 E:4. 11.

*XVIII. Where the Grant of the King to a Monk, or a dead per-  
 son in Law, is good.*

The king may well grant land to Farm to a Monk, and by the Grant he  
 is enabled to have an action for his Farm, but that is only in the Court  
 where he is charged, viz. in the Exchequer, by *Quominus*, &c. 2 H:4.  
 8. 3 H:5. 6. 7 E:4. 28. But a Lease made to him by the king for life, is void,  
 14 H:4. 10.

So if he grant to him a Farm, *Absque aliquo reddendo*, it is void, 7 E.4.  
 29. If



If the king grant to an Abbot and his Successors, that the Monks shall have the Temporalties during the Vacation, &c. they shall present to an Advowson which becomes void in the time of Vacation, 39 E. 3. 21. F. 27. B. 33 c.

XIX. Where the Grant of the King to a body which is not Corporate, nor hath capacity, is good, and where the Grant shall give capacity: So of the Grant of a man who hath not capacity.

If the King give Lands in Fee-farm, *Probis hominibus de villa de D.* this is a good confirmation: So where it is *omnibus Burghensibus & Communitati*: And by such like names of Corporation, they shall have an Action touching their Farm. And see there, that one of the Commonalty cannot justify the taking of a rent due to the Commonalty, because all is one entire body, 7 E. 4. 14. And see that such a Grant should be void, if it were not for the rent reserved, 7 E. 4. 28.

The King grants *Civibus & Communitati* of N. certain Liberties, and afterwards saith, *Et ulterius concedimus civibus predict. civitatis, quod non compellantur jurare, &c.* and it was holden that every Citizen by himself might plead it, and that it is a good Grant, yet not according to the Corporation, 21 E. 4. 56.

And there by *Coke* and *Brian*, If the King grant to me licence to make a Chauntry and to give unto a Priest, &c. to such a value, &c. and I do accordingly, this is a good Corporation without more words, and without reserving any thing, see 2 H. 7. 13. acc.

See 9 E. 4. 6. *Baggots Affise*, where it is holden, that the Grant of the King to an Alien who is no Denizen, is not sufficient for him to hold an Office without especial word of Legitimation: For which cause *Bago* pleaded the Charters of King *Hen. 6.* of a Grant of Legitimation, and good, notwithstanding the generall Act of Repeal, *An. 1 E. 4.* of all Acts of the three *Henries*.

See 29 E. 3. 21. Where the King granted unto the Monks the disposition of the possession of the Abby in the time of War, the Abbot being an Alien; Or otherwise in time of Vacation.

If the King grants Lands to [the Monks of *Westminster*. *Nele* saith, that the Abbot shall take advantage of such Grant, 21 E. 4. 58. vi. 49 E. 3. 4.

The King granteth to his Tenants of D. that they shall be discharged of Toll, this is a good Grant, 21 E. 4. 58.

**XX.** *Where the Grant of the King of offices is good, and where there ought to be the word constituimus, and where a Grant of offices to the King is good, and where the Grantee may make Assignee or Deputie.*

If the King grant to me the Office &c. *cum feodo*, where there was no such Office before, this is a void Grant, if it hath not these words *constituimus &c.* to make the Office &c. 8 E.4 6. vide 13 H.4.17.

But if the King grant me such office, *precipiend. pro illo* 201. this is good, although there was no such Office before, otherwise where he grants it *cum feodo & vad. sp. Etant.* for there needs the word *Constituimus &c.* 9 E.4.11.

A man grants the office of a Forrester unto the King, the same is good, for although the King cannot be an officer, yet he may grant it over, 1 H.7.29.

Note, That the King cannot grant an Office which another hath for his life, without speciall recitall of it, for it was sayd, the Office is not in him, so no reversion can be of it, 3 H.7.15. 8 H.7.12. 11 E.41.

Note the King cannot grant the Office of Justice, or of the Assistants to it, as the Clark of the Crown, &c. to him who hath not knowledge to exercise the office, 9 E.4 6.12. also the King cannot grant that Office to which of necessity is to be used by one onely, as the Office of *Preignothor* &c. 18 E.4.7. vide 9 E.4 6. 2. *Elix. Dyer* 175. *Seroggs Case*, C.4. part, *Mitons Case acc.* Vide 39 H.6.48. 1 H.7.29. 9 *Elix. Dyer* 259.

The grantee of the King of an Office of trust, cannot make an assignee without a speciall Grant thereof in his Patent, 33 H.6.34. 11 E.41. that he shall not make a deputy without words to do it, vide 9 H.6.31. of the Grant of an Office by the King, 13 H.4.17. 22 H.6.9. 2 H.7.6. and see 22 H.6.10. That it ought to appear in the Patent of the King of an Office by expresse words, or recitall or necessary intendment, that there hath been such an Office before &c. *Vi. C. 11. part 4. in Auditor* *(wiles Case Vi. C.8 part, the Earl of Rutlands Case.*

**XXI.** *Where the Grant of the King to a body Politick, by another name, then their Corporation is good, and where by his Grant the name of the Corporation shall be changed.*

Note, a Patent made to a Mayor, Aldermen and Bayliffs, not speaking of the Commonalty is good, for the Mayor is the head, and the others make the Commonalty. So of a Patent to the Mayor and Citizens: but if he were not Mayor at the time, it is void, 13 E.3.4.8.

See



## Grants of the King.

See 21 E.4.56. Where the King granted *Civibus & Communitati de N.* and afterwards in the same Patent said, *Et ulterius concedimus Civibus predicta civitatis, quod non cogantur jurare, &c.* and this was good, yet it did not agree with the Corporation.

The King may grant to the Mayor, that he shall not be impleaded by another name, then he is incorporate, 11 H.7.27.

XXII. Where the King ought to grant to hold of the chief Lord, and what Tenure it shall be when the King expresseth none in his Grant, and where he grants to hold by the same Services, as such a one hold.

THE King granted a Fee-farm to I. and afterwards did release to him in Fee, to hold by the Services due: And this was adjudged a Tenure in Knights-service, because it was for the most advantage of the King, 44 E.3.45.

*Finch.* saith, That if the King purchase the Lands holden of others, and grants the same without expressing any Tenure, they shall be holden in chief. So where Lands come to him by Forfeiture of War, as Lands in Normandy, or otherwise by reason of his person: But if an Honour be seized into his hands; now if a Mannor holden of the Honour do escheat unto him by a common Escheat, and he grant the same as before, it shall be holden of the Honour as it was before, 47 E.3.21. But in the two first Cases, *Fitzh.* thinks that the Rent is extinct, *Escheat* 11.

If the King grant lands, *Sine aliquo inde reddendo*, the grantee shall hold in chief for the non-certainty, for that is the best for the King, 33 H.6.7.

But *Prisot* there saith, That if the King grant land escheated unto him by forfeiture of Treason, and grant it over, *Tenend, de capitalibus Dominis*, this is good and shall be holden accordingly, 33 H.6.7. and see 46 E.3. Petitions 18. and 20. That where the mean Seigniorie is suspended only by the seisin of the King; and he granteth the Land over, if it be not *Tenendum de capitalibus dominis*, the Patent shall be repealed. So if the King purchase lands by Covin of a dead person, and grant it to him, the Patent shall be repealed upon a Petition made by the mean Lord.

The King granted the Lands of the Templers dissolved, which were holden of him in Frankalmoigne, to the Hospitalers of Saint John of Jerusalem, to hold of him by the same Services, &c. yet the Frankalmoigne was not revived by *Prisot*, because no certain Service, 35 H.6.56.

XXIII. Where

**XXIII.** Where the Grant of the King shall be voyd for cause of recitall, and where the Recitall shall make the Grant good, and where it shall be void by cause of false suggestion.

**Note** by *Hussy*, where the recitall of the grant of the King is upon matter of record, if it be false the grant is void, whether it be *ex mero mo* 26 H 8 1. Per *Fitzh. Plow.* or *ex rogatu*, &c. because the Grantee hath given him such a Mannor, or made to him such a Recognizance, or confessed such an action, &c. Com. 455. b.

**Note**, where the King makes a Grant upon the Information and Suggestion of the party of a Surrender of a former Lease, and there is no such Lease, the Lease being falsely recited in the date, as a Lease dated, 32 H. 8. where in truth the Lease was 33 H. 8. there the Grant is void, as it was holden *Trin. 21. Jacobi.* in the Kings Bench, is the Lord *Zouch* and *Mores* case.

*Trin. 9. Jacobi.* *Roper and Rodens* case, King Henry the eighth, reciting by his Grant, That where he had a reversion upon a devise made to *M.* whereas it was made to *N.* he granted the Reversion to *Roden*, It was adjudged that the recitall was not helped by the Statute of 34 H. 8. for the Statute doth not help false Recitalls, but mis-recitalls, and in this case there was a mistake in the thing it selfe.

See 3 *Eliz. Dyer* 195. *Kemps* case, Where the King was mistaken in the date of the grant of an office, and granted the Office to another, the grant was adjudged void:

*Vi. 38 H. 6. 37.* by *Danby*, If the mis-recitall be in a thing not materiall, and which indeede not to be recited, it doth not hurt the Kings Grant: *vi. 31 H. 8. Br. part 101. ac.*

Otherwise it is where the recitall is but matter of fact, as for service done, or because I am poor, &c. 21 E. 4 48. So 29 E. 3. 32. A Charter of restitution of a man attainted, reciting thereby that he was out of the Realm at the time of the Judgment, and for benefits by him done to the King, this is a void recitall, and the grant good.

So 9 Ed. 4. 12. A Charter of legitimation to *B.* reciting that he was a *Roman*, the Charter is good, although he was a Frenchman, and the recitall void, *Avowry* for *Amerciament* in a Leet, upon a resiant, he alleged the grant of the King within the town, &c. the Plaintiff said, that at the time of the grant, the King had let the town to *S.* for life, who had the Leet there, &c. Yet *Thorpe* said, That after the death of *S.* that the grantee shall have advantage of the grant, and afterwards, the Plaintiff was non suit, 32 E. 3. *Avowry* 112. The King granted certain advowsons to the Earl of *S.* being within age, untill he came to his full age, reciting how hee had granted the same to his father before, and although the said recitall were false, Yet *Green* Justice held the grant good,



and it was pleaded over for the King, 29 Edw. 3. 10. *Quare impedit* 190.

But see, the words of recitall came after the grant, as hee granted the Advowsons, &c. which his Father before had, whereas in truth his grant did not extend to them: See the grant.

The King granted to a Prior to appropriate Advowsons, which in truth were holden of the King, and that not recited in the Charter, and therefore it was holden a void license, and issue was taken if they were holden of the King, 29 E. 3. *Grants* 58. vi. 41 *Aff* 19.

See 2 H. 7. 13. A license to give a Rent *Unidam capellano*, where there was no such &c. It was held good to dispence with the Statute of *Mortmain*, and to express the intent of the King, by recitall of the Statute, *de Religiosis*.

Note, If the King grant an Office &c. upon a false suggestion to him made, the grant, is void, 37 H. 6. 27. So where the Suggestion is of a lesser value, or of another title, or that he had it by the forfeiture of *J. S.* which is false, 8 H. 7. 3. And see 38 *Aff*. 22. That the recitall in the Grant shall never conclude the King.

#### XXIV. Where the Grant of the King hath two Intendments, which shall be taken, and which not.

Note, It is said, Where the grant of the King may be taken to two Intents, it shall be taken the best for the King; but where it may be taken good to one intent, and void to another, it shall be taken to that intent which is good, by all the Justices, in the Abbot of *Walsingham* case to be discharged of the collection of Tenth, *Per Clerum Anglia*, 21 Ed 4. 45. vi. 2. R. 3. 4.

See 2 H. 7. 6. That speciall things shall not pass by generall grant, where there are other generall things which passe thereby by common intendment, as a grant to be Sheriff &c. without rendring an account, he shall be charged with green wax, and the grantee of all amerciements of his Tenants shall not have royall amerciements; and see the cases of Tenures before, where the Charter is generall without speaking of Tenure, or where it is to hold by Services, dues, it is Knights service in each case, 44 E. 3. 45. and 47 E. 3. 21.

Pardon of all demands shal take away no right of inheritance which the King hath, 6 H 7. 15.

The King seised the Temporalties of a Priory for a contempt, for refusing the Kings Varlet to a Corody, where it was found by verdict, that the house was of the Kings foundation, a Church became void, and afterwards the King pardoned him all occupations, Intrusions, Contempts and Injuries, and made him restitution as entirely, as he or any of his predecessor

decessors held. yet in that case it was adjudged, that the King should have the Presentment, 46 E. 3 Grants 50.

But see 9 Edw. 3. 26. If the restitution had speciall words, viz. so as he could not claim any thing by that seisin, the presentation had also passed.

A generall license to appropriate a Church which is holden immediatly of the King in cheif, the same not being expressed in the Charter, is void, and issue was taken upon the Tenure, 19 E 3 grants 58. *Knivet* held the contrary, 41 Aff. 19. the grant *ex speciali gratia*, all was void, if it be not according to the Kings intent.

Note, The Master of Saint *Leonards* could not have the goods of a man attainted of any Treason touching the person of the King, nor of him who had killed the Kings Messenger, by a Charter which granted to him and his Successors, *Catalla omnium tenentium suorum felonum & fugitivorum qualitercunque damnatorum*; But it was said, that the grant did extend to Petit Treason, &c. 22 Aff. 19, See 8 H 4 2. a man put to penance.

Note by this Case, That of Treason touching the person of the King, a man shall forfeit all his goods and lands also holden of others, but of other Treasons, hee shall forfeit but his goods and lands holden of the King.

The King being seised of the Honour of *P.* with the forrest appendant granted the Bayliwick of the Forrest to one in fee, rendring rent and afterwards gave the Honour to another in taile, and agreed that the Donor should not have the Bayliwick, no not after the death or forfeiture of the Grantee, because it was a thing severed by the grant of the King, *secus est* &c. If the King had aliened parcell of the thing appendant to the honour, to hold of him, see the case 26 Aff 60.

The Abbot of *W.* shewed Charters for his Sanctuary, which were *quod quisque fugitivus de quolibet loco, de quacunque causa, &c. & cujuscunque conditionis fuerit, &c. qui ipsum locum, &c. intraverit membrum, &c. & vite impunitatem consequatur, &c.* and another, *Quicumque intraverint &c. pro quacunque causa munione ecclesie gaudent.* And it was agreed by all the Justices, That these Charters did not extend, but to felony, 29 Aff. 34: viz. H 7 26.

The King granted to his son the Dutchy of *C.* *Cum omnibus ad eum spectantibus similiter cum Wardis, maritag. &c. & similiter alibi extra Com. predict non obstante Prerogativa Regis &c.* yet it was adjudged that he should not have the Wardship of him who held land of him, in the County in cheif, or other land holden of one who held of him who was in Ward of the King, by reason of Wardship, for it was holden, that such Wardship the King should have before the Prerogative, and the same is not expressed in the Charter. Also it is not spoken in the Charter of those who held of the King by many mesnes, as it is here, and of things touching the Crown, the King shall not be put out without express mention of them in the grant, 43 Aff. 15:



Vide 11 Eliz.  
Dyer 283. con-  
tra in case of  
a common per-  
son. vide 13. E.  
117. Dyer 300.

If the King be seised of an Advowson which is void, and he grants the same to a stranger in fee, the Presentment also shall passe, because there is no other profit of Advowson, which shall not where he grants Land and Advowson &c as an Advowson which is void, the Temporalties being in the Kings hands &c. and he restored them to the Bishop &c 9 E. 3. 26. Presentment 5 F.N.B. 33. N.

The King granted to the Earl of S. *Omnes Advocaciones que pertinent ad prerog. de M. et quas nuper concessimus prefato Comiti*, the Father, to whom in truth, he granted none, yet it was adjudged that this Grant was good for the Advowsons of the Priory, for otherwise it should be void in all, 29 E. 3. 7.

A Grant of Conusance of all Pleas, is no warrant to levy a Fine, 44 E. 3. 29: the same Law of Assise &c. 12 E. 3. Conusance 81.

M. 37. Ass. 6. Conusance was granted to the Bailiffs of Beverley in Assise by Grant of the King to the Provost, to have *Curiam suam*, and that was intended of his own Court, and to be holden by their Steward, or Bailiff at their Election.

See 6 E. 3. 51, where the King granted to the Bishop of E. *Prisai suae* &c.

### XXV. Where the Kings grant shall enure to two intents.

**A** Grant made to a person which is dead in Law, shall give to him a capacity to take and exercise a thing, which is for the advantage of the King, as a Farm to a Monk, 2 H. 4. 8. 8 H. 5. 6. 7 E. 4. 28. 14 H. 4. 10.

Vide Br. Pa-  
tents 83. Br.  
Corporation ac.

So grants to a Body not incorporate, vide 7 E. 4. 14.

A pardon of the King to the principall shall also excuse the Surety, where it is of a thing which is a duty before the forfeiture, as Debt &c. 1 H. 7. 10.

Brian saith, that if a man grant *hominibus de 7.* to be discharged of Toll, now they are incorporate, as to that, 21 E. 4. 56.

See 5 E. 4. 42. Where the Confirmation of the King of a Grant of an annuity by a Bishop, shall enure also to confirm the Rent, which is but rehearsed in the Grant of the Bishop to be due before.

Note, that the Grant of the King shall not enure to two intents for the advantage of the Grantee, where it doth not appear that the King was well apprised of his Grant, as a Grant to him who is an alien, or attainted, 7 E. 4. 28. 8 H. 5. 2 A pardon doth not discharge a Fine &c.

By what words of Grant for shipping of Wools &c. the Customer shall be also discharged of the Custome not taken &c. See 1 H. 7. 2.

XXVI. *Where the grant of the King shall be good, the thing being misnamed.*

**C**oke saith, If the King pardon the indicted of Treason, by the name of *W. C.* where his name is *W. T.* yet if the Charter be *ex mero motu*, he shall be helped by speciall pleading, *Brian* denied it, because the King was deceived in the misnaming of him, 21 E 4 48.

Where the King grants &c. *Civibus & communitati de N. &c. et ulterius concedimus civibus predict. civitatis*, this is good, although the Corporation be misnamed, for all doth depend upon the first words, 21 E. 4 156.

XXVII. *Where the Grant of the King is good against a Statute, without a Non obstante, and where it ought to be expressed.*

**I**t is said, that the Grant of the King with this clause, *Non obstante &c.* is good, of the Office of Sheriff for life, or otherwise against the form of the Statute of 23. H: 6: cap. 8. the words of the Statute are, that the Patents shall be void, any clause or word, *Non obstante*, put or to be put notwithstanding, so the Parliament cannot bind the King, nor take away his Prerogative: See divers Cases put by *Rock*, 2 H: 7: 6. See also 2. R. 3: 12. That the Licence of the King with a *Non obstante* is good against every penall Statute, even against the expresse words of the Statute.

*Vide 33 H. 8. Dyer 52. The Queen granted a Licence to transport Bell-mettall, non obstante aliquo Statute.*

XXVIII. *Where the Grant of the King shall be good without the confirmation of other Kings, and where not.*

**N**ote, it is holden by the Justices, that the Grant of King *Edward the fourth* of any Office which is not Judiciall, as Parkership &c. is good without any Confirmation, and so of Franchises, and the like by him granted, but otherwise it is of Offices which are Judiciall, for those were void by his death, 1 R. 3.

XXIX. *Where*



XXXIX. Where a thing appendant or regardant shall passe by the Grant of the Principall, where not.

**N**Ote, where the King grants a thing, that all other things which are parcell or incident to it shall passe also, without expresse mention made of them, as if the King grant a Hundred, the Leet also which is parcell of it, shall passe, without speaking of it, 8 H.7.4.

So of things appendant time out of mind &c. where the King reserves a Rent or Farm, as a Leet which hath been appendant time out of mind to a Hundred, and he grants the Hundred reserving Rent, the Leet doth passe, 18 H.6.11. vide 8 H.4.4. by Brian, Davers, Townsend.

So where he grants a Town to which a Leet is appendant *cum pertinentiis*, rendring Rent, the Leet shall passe, 18 H.6.11.

*Vide Sanford* Also before the Statute of *Prerogativa Regis*, an Advowson did passe by the Grant of the King of the Mannor, to which &c. without the words, *cum pertinentiis*, 43 E.3.22: 18 E.3.15: 1 H.4: 5.

Also *Thorpe* saith, that if the King grant a Mannour which he hath by Escheat, or by purchase, as entirely as such an one held it &c. the Advowson shall passe, for the speciall rehearfall doth declare his intent, and that he takes notice of it, and that was agreed by the Court, in 43 E.3.22.

The King granted the Bailiwick of a Forest appendant to the Honour of H. in Fee, rendring Rent, and afterwards he granted the Honor with the appurtenances to another in tail, and adjudged that the rent did not passe, but if he had granted parcell of the Forest, or of any thing appendant to the Honour to hold of him &c. the Seignorie had passed, 26 Aff.60.

See 5 H.3 by *Herle*, took a difference, where the King makes restitution upon the same Proceffe, whereof the Seisure was (1) to him in whom the Right was, and according to the Seisure, and when he makes restitution in their Right, but to another, or in another manner, as to Tenant in Dower, or to one upon Partition, or to the heir yet within age, for in those Cases Advowsons do not passe without expresse mention made.

So of restitution to him whose Lands were seised, because a Prior alien, whereas in truth he was born in *Gascoigne*, such a generall restitution doth serve for an Advowson, 27 Aff.48.

So of a generall Liverie to the next heir after the death of an Ideot, and there, although the Advowson was not appendant, if it were seised, 16 E.3 Liverie 30. otherwise it is, if it were never seised, 44 E.3.25.

The King seised Lands holden of him, after the death of him who held but for life, which was found accordingly, and he removed his hands, and sent to the Escheator to deliver them to him in the Reversion, with the issues, yet it was adjudged that the Presentment which the King made to an Advowson appendant, mean between the seisure and restitution, should stand

land, because there were no speceiall words of it, 24 E. 3. 7. *Quare Impe-*  
*ad 10.* But see that it passeth with speciall words in such case, 9 E. 3. 26.  
 11. 18 E. 3. 21. *ac.* 6 E. 2. *Presentment* 9. 27 E. 3. 81. *ac.*

Note, that land appendant to an Office, as Warden of the Fleet, or to a  
 Corody, shall passe by Grant of the King of the Office, or of the Corody,  
 1 H. 7. 19. 8 H. 7. 4.

Note, if the King grant to me the Patronage of a Priory, &c. I shal have  
 also the Corody, without speaking of it, because it is incident to the Pa-  
 tronage, and cannot remain to the King if it be not reserved specially, 26  
 Aff. 53 1 H. 4. 5.

So if the King grant to me a Castle, the Castle-ward and service to re-  
 pair it shall passe without mentioning of them. 17 E. 3. 65.

Note by *Thorp*, If the King purchase a Mannor to which Franchises  
 Recall are regardant, and afterwards grants it over *cum libertatibus*, &c.  
 yet the Franchises shall not passe, if he do not say, *cum libertatibus* at the  
 time when the Mannor was in the hands of the Feoffor of the King, 43  
 Aff. 10. C. 9 part, in the Case of the Abbot of *Strata Marcella*.

See 1 H. 4. 5. by *Gascoigne*, That a thing incident shall passe from the  
 King by a genrall Grant of the principall: As Common appendant with  
 the land, and a Corody with the Patronage; A Court of Pypowder with  
 a Faire, by *Tirwith*: A Court Baron by the Grant of the Mannor, 8 H. 7. 3.  
 It shall also passe by the Grant of the Hundred, 8 H. 7. 4. And Homage by  
 the Grant of Elcuage; And if the King grant a Fee, or an Honour, all  
 Mannors and Lands which were parcell of them, passe by the genrall  
 words, 5 E. 3. 65 6 H. 7. 14.

## XXX. Where the Grant of the King is good to make a Corpora- tion.

*Prian* and *Choke* say, That the King may make a Corporation without  
 speciall words to implead, or to be impleaded: and without reserving  
 any thing to himself: As if he give me licence to make a Chauntry for a  
 Priest, to say, or sing in such a place, and to give him land to such a value,  
 if I make it accordingly, it is a good Corporation, 21 E. 4. 56. 2 H. 7. 13.  
 But where any thing as a Farm or Rent is reserved to the King, every man-  
 ner of Grant shall make a Corporation, as a Grant *Probis hominibus de*  
*Wington*, &c. 7 E. 4. 14 & 28. 21 E. 4. 58 *acc.*

A Charter of Franchises to the Burgessees of *W*: good, to make them a  
 Corporation, 16 E. 3. 53.

The King granteth a Prebendary to one and his Successors, yet the Pa-  
 tronage doth remain in him, for he cannot be Patron of himself, so he  
 shall not have a Corporation to do a thing to himself, 17 E. 3. 39. 7 E. 3. 4.  
 8 E. 3. 45.



XXXI. *Where the Grant of the King to hold plea before the Steward, &c. gives him authority to make Justices, &c.*

**N**Ote *per Curiam*, If the King grant to me to hold all manner of Pleas before my Bayliffs, Steward, or Justices, although I had none before, yet I may well make them by this Grant, 7H 4, 5. acc.

XXXII. *Where the Grant of the King to pardon an Offence before it be done, is good.*

**T**He King grants to the Bishop of S. that he and his Successors shall be acquitted from all Escapes of Theeves and Felons, and of Escape of Prisoners out of their Prison, this is good for negligent Escapes, but not voluntary, 3 H: 7. 15.

The King granted to the Citizens of London, that no Battell shall be against them, 20 E: 3. *Corone* 125.

The King granted to the Mayor and Bayliff of Lynn, that they should be Toll-free throughout all England, and if any took Toll of them, that they might take as much in *Wibernam* of their Goods within their Jurisdiction, 8 R. 2. *Grants* 105.

XXXIII. *Where the Grant of the King to an Abbot, to be discharged of a Corody is good, where not, and where the Grant of the King of a Corody is good, and by what Words.*

**I**F the King grant to an Abbot that he shall be discharged of a Corody, this is good, for yet the Foundation stands, and as good as if expressed upon the Foundation, &c. And a Grant that he will not have Corody, is also good, 8 H: 7. 12. 21 E: 4. 18. by *Pigor*, 11 H: 4. 79. yet the Corody is incident to the Foundation: And if the King grant to me the Patronage, he may reserve the Corody by expresse words, 26 Aff. 53. 10 Elix: *Dyer* 269 acc. vi. C: 9. part 133. 17 H: 6. 7. 5 E: 4. 38. L: 5. E: 4. 122. although the King do release the Corody. yet the Patronage doth remain, and the King may grant the Patronage, reserving the Corody.

And see, that a Corody shall never be extinct by matter implied, as the Grant is, that shall be as free, as the King is in his Crown; and also a Release of all Actions Seculars, and Services, &c. 44 E: 3. 24. 14 H: 6. 12. An Abbot cannot prescribe to be discharged of a Corody, 9 E: 4. 43.

*Vi. Br. Corody*  
*ac. F. N. B.*  
230.

The Writ of the king to admit I: S: to a Corody was naught, by all the Justices, because it did not recite that the King had the Corody by reason of the Foundation, or the Grant of the Abbot, &c. 1 E. 4. 10. yet see there

there a President shewed where the Writ was admitted good, *totalem Curiam, qualem* such a one *habuit*, see 20 E. 4. 12. *vi.* Br. Corody 17 *vi.* N. B. 23

Note by the Justices, that the King may grant a Corody of so much bread, &c. to 20. men: But where the Corody is, to sit in the Hall of the Prior, and to be served as his Servants, he can grant the same but to one, 8 E. 4. 17. 24 E. 4. 83.

XXXIV. *Where the Grant of the King Without Deed, or by Deed not enrolled, is good, Where not.*

Tenant of the King makes a Lease for life, and grants the Reversion to the King, the Tenant attornes, who grants it over to a Prior, who grants it back to the King, &c. and this matter is found by Office, and holden good for the King, for the land being holden of the King, the Grant is good without Deed, as a Surrender, 49 E. 3. 4.

Note, that a Devise was made to the King of Goods without Deed, and without a Will in writing, it is good by Word onely; and into whose hands soever the Goods come, he shall be charged to the King. And so was it adjudged, 40 Ass. 35 *Monst. de faits*, 49. and therewith agrees as to the Goods, Danby, 37 H. 6. 10. And there it was granted by the whole Court, that if a man give lands to the King, and deliver the Deed to the King in the Exchequer, or to his Cofferer, that the right of the land is present in him.

But see 5 E. 5. 7. and 7 E. 4. 17. That such a Feoffment to the King is naught, if the Deed be not inrolled, for Livery cannot be made to him, by all the Justices, also he cannot be Feoffee to the use of another: And see 1 H. 7. 28. that the Remainder doth not passe to the King before that the Deed be enrolled, *Feoffments* 30 *Vi.* 1 H. 7. 13. *Br. Feoffments to Uses* 31. 14 E. 4. 2. 37 H. 6. 10. And *Vi.* 10 *Elix. Dyer* 355 If the Deed be not enrolled in the life of the King, it cannot be afterwards, 3 *Elix. Dyer* 195.

Note, the Feoffment of the King, of his lands of the Dutchy of Lancashire which are not within the County Palatine, may passe by livery without Deed, but not by Deed without Livery: But a Lease for years of them ought to be by Deed, by all the Justices, 21 E. 4. 60. *vi.* 11 H. 4. 84. The King as Duke is a Subject, see 34 H. 6. 34.

K k k k

XXXV. *Where*



XXXV. Where the Grant of the King allowed in Eyre, is void, notwithstanding the allowance, and where the allowance shall make it good.

**A** Grant which is void in it self shall be made good by no allowance as a Grant, &c. That they shall not be impleaded out of the Town, &c. this is void if it do not expresse before whom, &c. they shall be impleaded there, 20 E. 3. Grants 64.

The king granted unto an Abbot that he, &c. should be quit of repairing Bridges, Cawseys, &c. and this Charter was allowed in Eyre, yet it was adjudged, that he should not be discharged of repairing a Bridge which he ought to repair by reason of his Seigniory, &c. for that's to the people, and the tryall in a *Quo warranto* was but an Inquest of Office at the suit of the King, but he shall not pay for his passage, &c. nor shall do works at other Bridges, &c. but shall be quitted thereof by the Grant, 3 E. 3. *Itin: Nott: Assise* 445.

See 9 H. 7. 11. That no allowance of a Charter of Conusance granted before time of memory is good, if it were not allowed in Eyre, and see 33 E. 3.

*Conusance* 87. That Conusance shall not be granted in a Writ of Right, *Præcipe in Capite* by no allowance in other Writs, although that the Grant be new, and have speciall words, *Quicquid in nobis est*.

Conusance granted in Assise to him who had a Charter, *Quod habeat Curiam suam Regalem*, without allowance in an Assise, 30 Ass: 31. So where the Charter was before time of memory, by these words, *Omniem Regiam potestatem, et cognitionem omnium placitorum*, with allowance in an Assise, 34 Ass: 14. 12 H. 4. 13.

Charter of Conusance of all Pleas granted in an Assise, allowed before in Assise, 12 E. 3. *Conusans* 81.

Note, that the Grant of Conusance which doth not expresse the certainty, &c. dependeth wholly upon allowance, 8 E. 3. 2. a good Case: And there see, that the party himself shall have Conusance by a generall Charter, if it hath had a speciall allowance in the Case, see 41 E. 3. *Conusans* 31. it needed not to have been allowed in a speciall action.

XXXVI. Where the Grant of the King of Conusans of Pleas shall be good, and by what words, and where he ought to have a Writ to allow them, and where he ought to shew allowance.

**G**rant of Conusance shall never be good if it do not expresse before whom the Pleas shall be holden, 20 E. 3. Grants 64. 44 E. 3. 17. 3 H. 6. *Conusance* 4. Or a thing which doth amount to as much, as in *Curia sua* &c. 31 Ass: 6. 44 E. 3. 17.

See 12 E. 4. 13: Where Conusance was granted upon a Charter before time

time of memory. which did not appoint a Judge with allowance: For  
 Yrning said, that such a Charter was good at the time of the Grant, see  
 8 E: 3: 2.

Grant of Conusance of all manner of Pleas, *Quicquid ad nos attinet &c.*  
 will not serve for Conusance in a Writ of Right, *Pracipe in Capite*, 33 E.  
 Conusance 87.

Conusance granted in an Assise by Charter, which was, *Omnem Regi-*  
*on pascuam & cognitionem omnium placitorum*, 34 Ass: 14: 12 H: 4: 13:

So where the Charter was, *Quod habeat Curiam Regalem*, 30 Ass: 31:  
 Otherwise it is of a Charter of all Pleas, 22 Ass: 49.

Conusance shall not be granted upon no Charter shewed, if it hath not  
 been allowed before, without a Writ to allow it, &c. but if it hath been  
 allowed before, and that is recorded here, it shall be allowed upon de-  
 mand without a Charter, or other cause shewed, 35 H: 6: 54: vi: 13 E:  
 45:

Note by *Gascoigne*, That the Grant of the King to hold Plea, to those  
 who have holden Plea in the same point time out of mind, is void, for it  
 shall not take away the Common Law:

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XXXVII. Where the Grant of the King is void, because the Grantee hath  
 not sued *Ad quod damnum* upon it, and where it ought not to  
 be sued.

Note, that where the King grants Franchises to the Burgeses of *VV*:  
 which were to the damages of the Lords, and no *Ad quod damnum* is  
 sued, the Patent was holden void, 16 E: 3: *Grants* 53, 54:

Tenant for life alieneth in Fee, upon an *Ad quod damnum* sued, he taketh  
 back an estate for life, the remainder over by leave of the king, yet the  
 tenant shall have Aide of the king in an Assise, because the first Alienation  
 was not with leave of the king, &c. 34 Ass: 6: *Aid of the King* 94.

See F: N: B: 224. H: That now it is not the usage to sue an *Ad quod*  
*damnum*, but onely the licence, &c: but he saith, That such a Licence shall  
 not be received of the Justices without a Writ out of the Chancery of  
*Quod permittat*, and so it is holden, 33 H: 1: 52:

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XXXVIII. Where the Grant of the King to make a Sanctuary is good,  
 and how it shall be construed and intended.

The Justices were in divers opinions, if the king at that day might grant  
 Privilege of Sanctuary against high Treason, but it was adjudged  
 that an ancient Grant *Quod Abbas &c: liber sit ab omni Regis obstaculo, &*  
*inhabitantes ejus nullo Regis jugo deprimantur, sed in cunctis rerum even-*  
*tibus*



## Grants of the King.

*sibus & causarum discussionibus, Abbatis decreto subiciantur*, will not serve, but for such matters, whereof the Abbot might have consance, and not for Treason, 1 H 7 24 and 26. See here that such privilege could not be by prescription without special grant of the King: Also a dispensation of the Pope would not serve the turn: Also it was there agreed, That it is not a Sanctuary by grant only of the King, untill it be dedicated and consecrated by the Pope, 1 H 7 26.

Note, That a Charter of privilege which is, *Quod quisquis fugitivus de quolibet loco, de quacunque causa &c. & cujuscunque conditionis fuerit ipsum sanctum locum W: fug: intraverit, &c. membrorum & vite impunitatem consequatur, &c.* And agreed by all the Justices, that these and the like words extend to felonies only and not to Treason 29 Aff. 34:

X X X I X. Where the grant of the King shall be good of an Estate not certain in the Grant, and where it shall be said uncertain in the Grant, and where he shall grant a thing uncertain to him.

**T**He King grants to the Mayor and Commonalty of W. the town of W. *Cum pertinentiis*, by this grant they shall have the Lree, and all other privileges, &c. as the King himself shall have by reason of his Seigniori in that town, 18 H. 6. 11.

The King grants to the Mayor and Bailiffs of Lancaster, all the Liberties, &c. which the Burgeses of N. had, and good, 20 Edw. 3. *Asswry* 128.

If the King grant to me land, rent &c. and doth not determine in the Patent what estate I shall have, it is but an estate at will, 17 E. 3. 45. 21 E. 4. 46:

The King granted to the Abbot of Westminster, to be discharged of the collection of Tenth granted *Per clericum Angliæ*, the Province of Canterbury granted a Tenth, he shall be discharged, 21 E. 4. 45. 20 H. 6. yet if his grant be Collector of his Rents due at the Feast of our Lady, this is void. So if he grant to me twenty pounds to take of the Collector of Tenth, &c. if he do not name of what province, it is a void grant, 21 E 4 48. See 32 H 6 20. where the King granted after the death of 7. S &c.

X L. Where

**XL.** Where the Grant of the King shall be taken strictly, and according to the bare Nature of the words, by which hee grants, without other intendment against him, and every word construed for his Advantage.

**T**He King granted to the Abbot and Monks of R. certain Mannors, &c. and granted farther by the same Charter, that at every avoydance, the Prior and Monks should have the disposition of all the profits &c. *Ad sustentationem eorum*, and it seemed to Thorpe and Chelr, that yet the King shall have the Advowsons, because they cannot be said their sustenance, 39 E 3 21. Hence it followes, that the consideration of the Grant is materiall.

The King grants unto the Chapter &c. the election of the Bishop, yet he remains Patron, for Election is no presentment. 17 Edw. 3 40. So it is of a Prebendary, to one and his Successors, 7 Edw. 3.

The Bishop of L. claimed the goods of one put to pennance, because he stood mute, where it was found that he spake the same day, the Charter was *Catalla felonũ & fugitivorum idẽ omnibus hominibus tenentibus & residentibus infra terras, & feoda. pradict. &c. Ita quod si pradict. homines tenentes &c. pro aliqua transgressione sua seu quocunque alio delicto vitam vel membrum amittere debent seu debeat, &c.* And it was holden by Tirwith, Gascoigne, and others, that he should not have those goods by that Charter, for they sayd, he was not put to death for felony, but for his contumacy and disobedience to the Law, so not within the first generall words, for by them he should not have the goods of him who was *Felo de se*, or Clark-convict, and they said, That this obstinacy could not be called Felony, they also sayd that it was *Delictum*, for which he hath Judgement for life and member: For Gascoigne sayd, That the Judgment is but of pennance and by Construction of Law, hee might live long. Also Norton sayd, That that which is after the *Ita quod*, being more large then what was granted before, did not bind the King, 8 H. 4. 2.

The Grant of the King to G. *Regi Haroldorum*. or *Clerico Corone*, &c. for term of his life, yet it is determinable with the office,

Note by Babbington, If one be condemned of an escape, and fined, and afterwards the King pardons him all Escapes, yet he shall not be discharged of the Fine, for this is now as a duty to the King. 1 H 5 2 The same Law, where the King releaseth all actions, suits and demands, such a fine so imposed as before, is not discharged by *Pardon*, 9 H. 6. 4. So a pardon of all Occupations, Intrusions, contempts, injuries, will not take away a Presentment fallen during the Kings seisin, for a contempt.



## Grants of the King.

The King seised lands after the death of his Tenant who had an estate in the land but for life, and at the suit of him in the Reversion, the King removed his hand and sent to the Escheator, to deliver him the issues and profits, yet by that Writ he had not the presentment to an Advowson, for that was not comprised within the word, issues, 24 E 37.

But if two be bounden to the King, a pardon to one is a pardon to them both; but if two are Accountants to the King, and he pardon one, yet the other shall account for the whole, 34 H 6 3. Also one shall not take advantage in his particular cause of a Release made by the King to him and another 21 E 4 46. And there one shall not plead a grant made to him and another for the building of a Chantry.

Where the King grants to one and his heirs Liberties in *Terris suis*, that extends only to lands which he hath at the time &c. 38 H. 6. 10 19 H. 6. 62.

If the King giveth me leave to grant a Rent in Mortmain, if I grant it with clause of distresse it is void, for there may be a rent without distresse, 29 H 7 12.

If the King grant a Rent out of a Mannor, where he hath but the Reversion, or otherwise grant the Reversion, the same is void by *Gastcoigne and Tirwib*, 11 H 4 85.

An Abbot alone cannot make a feoffment by a License to him and his Covent to make a feoffment. Also where the license is to make a feoffment by Deed, a feoffment without a deed is not good 21 H 77.

### XLI. Where the Grant of the King shall be taken strictly for his advantage.

**I**F the King give lands &c. without *Aliquo inde reddendo*, the grantee shall hold by Knights service 33 H 6 7.

See 14 H 6 12: 44 E 3 24: That an abbot shall not be discharged of a Corody by no generall words, as to be so free &c: as the King in his Crown, to hold quit of all services seculars, actions, and demands:

So a grant of a Sanctuary shall not extend to Treason, by no generall words, 1 H 7 26: 29 Aff: 34:

If the King grant to me *Custodiam terram, & heredis quamdiu in manibus nostris fore contigerit*, If he make Livery within age, my Interest is determined: Also if the heir at his full age do not sue Livery, yet I shall not meddle after, but the King shall take the profits, 9 H 6 28:

**XLII.** Where the Grant of the King shall be taken according to his intent favourably for the Grantee.

**Staff** saith, Where the grant of the King is to enure by way of enlargement, that the Grantee shall have advantage (as for the increase of his Liberties) &c. it shall be taken beneficiall for the Grantee. **Edw. 3. 52.**

Also when his grant should be void in all, if not, that a favourable construction be admitted; it shall be taken beneficiall for the Grantee, for that according to the meaning of the King, see for this ground, **21 E. 4. 45. 41. Aff. 19.**

**1 H. 7. 13. Plow. Com. 333.** See C. 1. part in the case of *Alton Woods*, see **37 H. 6. 21. b.**

And when the intent of the King is apparant, &c. as if he grant a Mannor as largely, &c. as I held of whom it escheated, or of whom he purchased it, **43 E. 3. 33.**

So if hee grant all the Land, which ought to come to him by the death of *I. S.* the grantee shall have it, and that which is not seised. Otherwise it is, if he grant the land whereof he is seised by the death of *I. S.* **10 H. 4. 24.** So where it is an ancient grant of the King before time of memory, as a grant unto an Abbot, *In perpetuam hereditatem*, this is fee, **1 Henr. 7. 14.**

**21 Edw. 4. 48. 16 H. 4. 7 C. 1 part**, If the King grant the Mannor of *D* which he hath by the Attainder of *I. S.* and he hath it not by Attainder, the grant is void.

The King granted the Chancellor &c. of *Oxford* Conuifance when one party is Clerk, and upon that it was agreed that he should have Conuifance, where himself was party, because the Chancellor is alwayes a Clerk **8 H. 6. 19.**

The Moyety of a Mannor passeth from the King by the name of the Moyety of a Knights fee. **47 E. 3. 21.**

See *Bracton Alienation 1. Williams de Riparaves case*.

The King grants to his Patentee, that if he be impleaded and loose &c. that he will render him other Lands in value, this was holden a good warranty to have recompence. **39 E. 3. 12.**

The King giveth license to *B.* to give lands and Tenements in Mortmain to the value of a 100 s. by the year, and he giveth an Advowson, and good, because an advowson shall passe by the name of Lands and Tenements, **33 E. 3. Grants 103.**

**XLIII.** Where



**XLIII** Where a man shall have a thing by generall Grant of the King, by matter ex post facto, which by no possibility he could have at the time of the Grant.

22 E. 4. 21. acc.  
Vide 8 H. 7. 1.  
7 H. 6. 13.  
18 H. 6. 11.

**N**Ote by *Fairfax*, that by generall Grant of Conuifance, the Grantee shall have Conuifance of all the actions which were at the time, although it be enlarged for other matters, or a greater pain given &c. if the principall writ was at the time, 22 E. 4. 22 and 6 H. 7. 5. and there agreed, that the Lord of a Leet shall not enquire of the same action enlarged by Statute to other matters (as Rape made felonie) although the action were before by such grant to have a Leet, See 7 H. 6. 35. by *Strange*.

**XLIV.** The Grant of the King is stronger than Confirmation, and where his grant shall be taken but as a Confirmation.

**I**F the King recover in a *Quare impedit*, and grant the Presentment, this is a good execution of the recovery, but if he ratifie and confirm to the Incumbent who is in of anothers presentation, yet he may have a *Scire facias* to execute the recoverie at the next avoidance &c. 9 E. 3. 20. 25 E. 3. 11. 10 H. 4. 4. 11 H. 4. 74.

A Confirmation shall enure alwayes upon an estate precedent, and according to it, but by Grant the thing passeth &c. vide 44 E. 3. 17. and there the Charter was taken according to the words of the Grant, where it was of Confirmation, and further granted &c. but see 11 E. 4. 1. where *Littleton* saith, where the King doth confirm a Grant precedent, and further grants the same thing, all is but a Confirmation, and if it be not a good Confirmation, it shall be void, for that was his intent, so deceived.

The King grants to the Bishop of *E. prius suas*, at such a Port &c. whereas in truth the Bishop had certain prises there before, and it was holden, that it was but a Confirmation of the ancient Priviledge, 6 E. 3. 5. 1.

**XLV.** Of what effect the Grant of the King shall be of a thing to which he hath no right at the time &c. and after his Interest is annulled.

**A** man leaseth a Mannor for life saving the Reversion, and afterwards is attainted, and afterwards at the suit of the heir this attainder is utterly reversed by Parliament, and the heir restored, &c. afterwards the King grants the Reversion to a stranger with warranty, and the Tenant for

for life dieth, the Heir brought a *Scire facias* against the Patentee who prayed in aid of the King, and had it by award, and recovered in value, yet the King had not any thing at the time &c. 39 E. 3. 12. and note here, that the Plea in the distruction of Patent not allowed to overthrow the warranty, but see 29 E. 3. 22: where the King granted such Reversion, the Tenant attuned after the attainder utterly reversed by the King and Parliament, by which he granted the Reversion to a stranger, who brought a *Quid juris clamat* against the Tenant for life, and he was driven to attune, without making the Patentee party &c.

If the King be seised of such Land, and that without matter of Record, and grant it over, I shall have an action as the Case lieth, against the Patentee.

If the King grant an Office to which he hath no right, as there is no such, this is void, although one hath used the same by his patent before, 13 H. 4. 18. but if his varlet hath been admitted to a Corodie, to which he hath no right, he may well grant the same again, for that the house is charged with it for ever, 13 H. 4. 17.

The King grants Land seised for alienation without licence before the Statute, to the same Feoffee to hold of him, yet he shall hold of the first Feoffor, 20 Aff. 17.

**XLVI.** Where a man shall take advantage of the Kings Grant against his own Act.

**Note,** the Grantee of the King to be discharged of Taxes, Tenths, Fifteenths &c. shall not be charged by the generall Grant of Parliament, Convocation, Province &c. although he himself be one of them, but it lay not in his power to deny it &c. 19 H. 6. 63. 21 E. 4. 45.

**XLVII.** Where there is a Condition, Consideration or Reservation in the Grant of the King.

In every Grant of Conusance there is a Condition implied that he shall do right, and another that the matter be such that he may judge of, and another, that he demand it within convenient time, of the first see 12 E. 4. 7. and infinite Cases of the second, 1 H. 7. 24. and 26. 29 Aff. 3 H. 4. 8. 8 E. 4. 8. 11 H. 4. 40. 8 H. 6. 7.

So in a Charter of exemption of Juries, there is this Condition implied, if there be enough besides him &c. 21 E. 4. 7. and he shall alwayes be sworn as a witnesse, notwithstanding the Charter, by Choke, 21 E. 4. 48.

The King grants to Garter, that he shall be King of Herald, taking



201 by the year for his life, by reason of his office, now this is good upon Condition (s) so long as he is Herald, and that although the Clause, *ratione Officii* were out of the Charter, 7 E. 4. 23. The like Condition is implied in the Grant of an Office, 39 H. 6. 34. B.

The King gave Lands *ad effectum*, that the Grantee should give it in *Mortmain*, this a good Condition, 38 H. 6. 35. & 38.

Reservation is implied in the Grant of the King without mention, as Tenure, things appendant not expressly granted, and things more special than those which passe of common intendment by the generall words, and things which touch his person and Crown.

**XLVIII.** *Where a Condition in the Grant of the King, which is against the nature of the Estate or thing granted, shall be good.*

**T**HE King gave Lands to the Earl of G. and M. his wife, so, as if his wife shall survive, that she might aliene, 18 E. 3. 31. B.

The King enfeoffeth one in Fee, upon Condition that he shall not alien, this is a good Condition by his Prerogative, 21 H. 7. 8. a.

**XLIX.** *Where the Grant of the King shall determine by his death,*

**T**HE King cannot grant Priviledge of Sanctuary for Treason to bind his Successor, 1 H. 7. 26.

King Edward the second granted a Prohibition, that no writ of *Cessavit* should run in *Northumberland*, during the War, it shall not bind his Successor, 9 E. 3. 16. So every grant of a Judicall office is void by his death, 1 R. 2. 4.

**L.** *Where the Grant of the King shall be good, concerning a thing which touches the spirituell Jurisdiction.*

**I**F the King grant to one who is chosen Bishop, that he shall retain a *les benefices*, after that that he is chosen Bishop, this is good by *Hank Norton, Skrene*, otherwise it is if he were created Bishop before such Grant, and the same difference holdeth place in dispensation of the Pope in such matter, 11 H. 4. 38. B. 14.

By the Grant of the King of the possessions of the Templers dissolved to the Hospitallers of Saint *Jehan*, to hold as &c. yet the Appropriation of Churches

Churches to the Templers will not serve them, although confirmed by Parliament, 3 E. 3. 11.

The King by his Grant cannot make an appropriation, nor it cannot be made without him, 7 E. 3. 1. 3 E. 3. 11: and of appropriation and Union by Grant and Confirmation, see 50 E. 3. 26. 6 H. 7. 13.



# GRANTS

OF

## COMMON PERSONS.

*1. Grant of Tithes by a Spirituall man, or that he shall not take them, or the Grantee shall not sue for them, and a Grant to him is good:*

**C**omposition before time of memorie, is a good discharge of Tithes, and may be well averred where the Parson hath *quid pro quo*, as Land &c. 8 E. 4. 13.

See that a Grant to be discharged of Tithes shall be a good Bar in the Spirituall Court, and that he who is sued for Tithes against it shall not have a Prohibition &c. 8 E. 4. 13.

Tithes granted to a Lay person are become temporall, and shall be claimed by him, as Lay Chattels, 38 E. 3. 6, 42 E. 12.

One gave to a Religious house, *cum corpore suo novam garbam de toto Dominico suo in B. in puram elemosynam*, and afterward enfeoffed a stranger of the Land, who took the sheaves, and the Prior sued in the Spirituall Court, and well, so of the ninth part of Tithes, 7. 6 H. 3. Prohibition 18.

In ancient times a man might grant his Tithes to whom he pleased, as other times, by Hen. 7 E. 3. 5 See 44 E. 3. 5.

Upon a Composition betwixt the Parson and an Abbot, that the Abbot should not pay Tithes of his Demesne Lands, it is good, yet Trespasse doth not lie against the Parson for taking of them &c. because the Right of the Tithes is to be tried, but if the Parson grant to me my Tithes for two years, and he takes them, Trespasse lieth, for I acknowledge the Right and claim a chattell &c. 38 E. 3. 7: Jurisdiction 43.



I I. *Where the Grant of a common person shall be made good by Confirmation of the King, and where by Confirmation of a common person.*

**T**HE Bishop and Chapter ordain three Officers, the Chancellor, Treasurer &c: and gave to each to them a Prebendary by such name, and the King did confirm the Ordinance, and further granted, that they should not called Prebends, but according to their names of Dignities, this is good, and they shall be so impleaded, and by that the King brought a *Quare impedit* against the Treasurer of L. without other Execution, 50 E.3:26.

*Quintin* leased for life rendring eight Marks, and granted four of the eight marks to a stranger, to take of the Tenant &c. and died, the Tenant died, the heir of *Quintin* did confirm the Grant of his Father unto the Grantee for life, and granted that he might distrain for it, and it was agreed, that this is a good Rent-charge, although the Confirmation was after the death the Tenant, and after his Entrie, because it was before the Rent was extinct by Judgement, by *Schard*, 14 E.3. *Affise* 109.

A man grants a Rent, and dieth before attornment, and afterward the Tenants in the name of Attornment deliver to the Grantee a pledge, and the heir doth release unto him all his Right, and in assise he was found seised and disseised, by which he recovered, for it may be that he was seised, at the time by Disseisin, by *Scot*, 16 E.3. *Affise* 74.

Of the Confirmation of the King, of the Grant of a common person, See 44 E 3. 17.

Of the Confirmation of the King of the Grant of a Bishop out of the Church, grants 5. E.3. 42.

If a Parson make a Lease for life and dieth, and his Successor receiveth fealty of the Lessee, he shall not avoid the Lease during his life, 11 E.3. *Abbe* 8.

III *Where the Grant of the Commonalty is good, although they have no corporation, and when a grant made to them by a common Person, is good.*

**N**Ote, a composition betwixt the Abbot and the commonalty to S. by which the commonalty grant to repair certaine Mills was holden good yet there was not any corporation alledged in them, for they had not a Major, nor Bayliffs &c. 2 H.6; 9. Grants 3.

The Lord of the Mannor of B. &c. granted to the Commoners of F. that the wry betwixt B. and F. should not be straitned, nor diminished by him nor his heires, but kept at large &c. By this Grant the Commoners

ners of F may disturbe his heir to dig the way &c. 32 E 3: B. 261: Ser. 12. H. 7: 2. A grant of Land to a person to the use of the Parish.

IV. Where a grant to distraine for so much Rent shall make it a good Rent-charge, and where a grant of the Lord to destraine in other Land shall be good, where a grant that a stranger shall distraine.

If a Man grant to me that I shall distraine &c. for 20 s. of Rent, it is a good grant, *ut dicitur*, 9 H. 6: 9: 6. yet there is no word of grant, *vide* 26. Aff. 34. by Skipwith. vi. 29: Aff. 23. partition 12: if a man grants a rent, and if it be behind *quod de terris suis levetur*, the same is a good rent-charge: vi. 21 H: 6 11 17 E 46 If I recite that I have granted a Rent to I. S and that he and his heires may distraine in the Mannor of D, for it is a good grant although there was no grant before, by *Markham*.

A man grants a rent by these words, *Obligo me &c: in uno annuali redditu &c: & obligo manerium &c: ad districtionem ballivi Dom. regis &c:* this is a good rent charge 46 E 3 18. vi. C 7 part. *Butts Case*, If I grant to you that you and your heires shall distraine for a Rent of 40 s. within my Mannor of D. the same by construction of Law doth amount to a grant of a Rent out of D. 3 E 12 3 Aff: 7 22 H 6 21 But when one grants a Rent out of his Mannor of Dale and if the rent be behind that the Grantee may distrain for the same Rent in the Mannor of S. it is but a penalty in the Mannor of S. for if it should be a grant of a Rent out of S. the Grantor should be twice charged. vi. 9 H. H 9. If a Rent were in *esse* before then the Grant of distresse is but a penalty, But see *F. N. B. 224 G 41. E 3 15 1: Affise 10. Br. Aff. 105* that the party ought to sue an *ad quod damnum*, which proves it to be a new grant.

A Prior granted to one by fine to sing Masses &c. and granted that the Justices of the Common Pleas or Baron of the Exchequer shall distraine to make them do them; and the heire brought a *Scire Facias* against the Successor, and had a Writ to distraine him to do them &c. 38 E 3 39 Where what remedy if the Bayliffs of the King or the Justices will not distraine, for it is in their election, by *Mowbray*, 38 E 3 39: 14. Aff. confirmation 13. If Lessee for life grant a rent in Fee and dyeth, and he in the reversion confirms it with words of Distresse, it is good, and is a new grant, So. 46 E. 3. 32. If the Grantee purchase parcell of the Land, and yet the Tenant grant that he may Distraine for the same Rent, this is a new Grant and a new Rent.

The Tenant granteth to the Lord that he shall distraine in other Lands for the services, this is good, and he shall avow in them: and such grant unto an Abbot doth not make Mortmaine, for it gives not a new rent, nor *signiore*, 9 H. 6 9. 41: Aff. 3. A man seized of a Mess. and two Carues of Land in W. bearing the name of W. granted a Rent of 40. s. and to S. *precipiendum apud W.* and if the said Rent be behind that he shall distrain.



## Grants of common Persons.

distraint in omnibus terris & tenementis apud W. B. C. and D. in an Aff. the Lands in W. were onely put in view, and it was holden that the Lands in W. were onely charged with the Rent, and the Lands in B. C. and D. were onely as a penalty.

The same law of a Rent charge 2 E 2 Affise 160. 41 E 3 15. 32 H 6. 27 17 E 4 6 But it is holden that the other Land of him is not charged as with a rent issuing out of it.

V. Where the Grant of a Common person shall make things appendant or appurtenant to passe, and where incidents shall passe by the words appurtenances.

**N**ote by Finchden, If a man gives a Mannor by fine or by a Feoffment without Deed, all the appurtenances passe, yet there is no express mention of them 44 E. 3. 40. And he saith 44 E 3. 20. That he who recovers a Rent, he shall recover sealtie, also if it be a Rent-service, because incident, 5 H. 7. 38. it is holden that an Advowson appendant doth not passe by a Feoffment of the Mannor, without saying with the appurtenances, against 44 E. 3. Brief 581.

Paston saith, If a man grant an Advowson appendant to a stranger for terme of life, yet the reversion is appendant to the Mannor, and shall passe by grant of it; otherwise it is where he leaseth the Mannor for life, saving the Advowson &c. for there it is made in grosse 38 H. 6. 34.

A man leaseth Land parcell of a Mannor for life, and afterwards grants the Mannor to a stranger, the reversion shall passe M. 15 E 3. Grants. 62.

A man dyeth seized of a Mannor, with Advowson appendant, the yongest son entreth, the eldest son levieth a Fine to him of the Mannor and Advowson, and releaseth &c. The yongest Son renders back the Mannor, and the chiefe Messuage with the appurtenances in Fee, adjudged that the Advowson doth remaine to the yongest son, 12 E. 1. Grants 87.

VI. Where a Grant made by an Infant is good.

**A**N Infant seized of a Mannor with a free Chappell appendant, to which his Ancestors time out of mind have used to present a Clerk. The Presentment of the Infant to the same is good and effectual, for he can have advantage of this no other way. Also his Writ to present to an Advowson is good, 26 H. 6. Grants 8. Perkins 4.

It seems by Perkins that he ought to be of the age of discretion, at which age he saith, that his Obligation *Pro vidua & viduis* is effectual, 18 E. 4. 2.

It is a Maxime, That Grants of an Infant which take effect by delivery of his hands, are not void, but voidable 7 E. 4. 7. by Coke.

If an Infant give me a Horse, and deliver him into my hand with his own

own hand, yet he shall not have Trespasse, P:16 H.6. Release 8.

The Infant himself, nor his Heir, nor his Feoffee shall not say against his Deed of grant of a Rent charge, that he did not grant by the Deed, for the Deed is but voidable, Perkins 3. ac.

VII. Where by a generall Grant by the name of Land, Tenement, Rent, &c. a Mill, Reversion, Common Advowson, Services, &c. passe.

**N**Ote, If a man grants all his lands and Tenements in D. if he hath Common in grosse in that Town, it shall also passe, by Newton, cleerly; and therefore he would not demur, 11 H.6.22. Grants 8.

Martin saith there, that a Way shall not passe by such Grant, if it be not appendant to some of the lands. Newton said, that a woman shall be endowed of Common.

And it is holden by all the Justices 20 Aff: 9. that a Common shall not passe by the name of Tenement, nor of Pasture, but onely by the name of Common.

A Reversion shall well passe by the generall Grant of Tenement, 11 H: 62.34 H.6 8.37 H:6 5.16 E:3. rants 55.

5 H: 39. ac. vi. 11 H:7 19. A Reversion is a Tenement, because he who the Reversion holdeth of the Lord; But a Remainder is no Tenement, and is not subject to a Distresse.

A man grants a Mill, whereof his Mother holdeth a third part in Dowry by these words, *Totum molendinum meum*, and saies nothing of the Reversion, yet it shall also passe with Attornment of the Mother, 30 E: 3. Trin. Cornub. Grants 86.

He who Grants the Reversion of Tenant in Dower, or by the Curtesie, ought to grant it specially although they have Granted over their Estate: Otherwise if it be by Fine, it shall not be received, 18 E:3. Fines 44.

The Donor granted the Services of Tenant in tail by Fine, Scrope said, That by that the Reversion should well passe with Attornment, and said to the Tenant in tail, that he shall be in Custody unill he attorn, for which he attorned presently, An: 30 E:3. Itin: North: Per qua servitia 17. See 26 Aff:66. Where such a Grantee had the Wardship of the Issue in tail.

A man releaseth to him who holdeth of him by Fealty and Rent, all his right in the land saving the rent, yet this is a Rent service as before, 12 E:4.11. Release 16. So by Grant of such rent, the Fealty passeth as it seems, 44 E:3 19 Perkins 23.

Danby saith, That if I make a Feoffment of two acres, and deliver Seisin.



sin of four acres, that the four acres passe by the Deed. So if the Feoffment be of a Mannor, and the Livery in twenty acres, the acres passe by the Deed. *Choke* said, that is, if they be known by the name, &c. 7 E:4. Feoffments 23.

7 E.3. Quare  
Impedit 19. 30  
E.3. Quare  
Impedit 5.

An Abbot Parson Imparsoned, before the Statute did grant the same Church to another Abbot, &c. And the opinion of *Stone* was, that the Vicaridge of the Church did passe by the Grant. *Thorp* contrary, When he was not seised thereof to his proper use, and not especially mentioned: And *Fitz.* notes, the Advowson of the Parsonage did passe by the name of the Church, T: 16 E:3. Grants 56. the Grant was by Licence of the Pope.

Note, an Advowson may well passe by the name of Lands and Tenements; and therefore where the King gave licence to one to give Lands and Tenements to the value of a hundred shillings in *Mortmain*, and the party did give the Advowson of a Church, that the same did passe, 33 E:3. Grants 102. So an Advowson is valuable, see 5 H. 7. 38. that an Advowson doth not passe by the grant of Lands and Tenements, and that it cannot be of value, see *Monstrans de faits* 114.

*Harle* saith, An Advowson is no Tenement, 8 E: 3. 28. and 8 E: 35. he would not allow the Return of the Sheriff of an Extent in Dower, because he did extend an Advowson: But 10 E:3. 13. an Advowson was extended in Dower, and delivered in the name of other Advowsons. And it is said, 8 E:3 35. It shall be valued by the Court, not by the Sheriff.

Lord and Tenant by Homage, Escuage, and six pounds rent, the Lord Grants the rent to a stranger, with Wards, Reliefs, Escheats, and all that might fall by the death of the Tenant, yet the Services do not pass (as it seems) there, for the Grantee being driven to make his claim, &c. claimed a Rent-seck; yet *Thorp* thought it a Rent-service, see the case, P: 15. E:4. *Hors de son fee* 28.

It was adjudged, 4 E. 3. *Itin: Derby*, Feoffments 29. That by the Grant of a Water and Piscary, that the Soil did pass, as by the Grant of a Pool, vi: 18 H. 6. 30.

14 H. 8. 1. by  
lease of a weay  
the soili and fi-  
shing passeib.

So the Soil shall pass by the Grant of a Stream, &c 8 E: 3. 13. see 45 E: 3. Dower 50. of the Grant of the profits of a Mill.

And an Advowson of a Church shall pass by the Grant of Advowson of Tythes 4 E:3. 27.

Land shall not pass by the name of a house, because it is not parcell. But by the Grant of the Vesture of the land, the land it self shall pass. See for these, 12 H:6. 2. 14 H:8 7. and 17 E:4. 6.

VIII. Where a Grant of parcell of the Services is good, and where a Grant of the Services of parcell of the Land holden, is good, and where the Grant of a Reversion of one Tenant, where there are two, or of parcell of the Land, &c. and where not.

If a man hold of me three acres of land by twelve pence, and I grant the services of the third acre, this is void, by *Littleton*, for I cannot sever the Tenure, *M: 8 E: 4 Grants 19*.

Two joynt Lords, one Grants his Moyety of the Seigniory, &c. it is a void Grant, by *Herle, 5 E. 3. 31. 9 E: 3. 31*. Otherwise it is of Parceners, because their Right is severall, by *Herle, 5 E: 3. 31*.

In a *Per qua servitia*, it is a good Plea, that he holdeth joyntly with other not named, or that he holdeth of the Conusor and another as joynt Lord, *9 E. 3. 31*. And *Kelf*. saith there, If the Lord grant the Moyety of the Seigniory to a stranger, &c: that he shall have but a Rent-seck, &c. *9 E: 3. 31*.

If a man make a lease to husband and wife for life, and afterwards granteth the Reversion to a stranger, of the lands which the husband holdeth, it is void by *Schard* and the Court, *H: 13 E: 3. Grants 63*. The same Law if he grant a Reversion which is to him and another, *27 E: 3. 1*.

Two Joynt-tenants of a Hundred, one granted his Moyety, and admitted good, *9 E: 3. 36*.

IX. Where a Grant of the Reversion to Tenant by Statute-Merchant shall be good.

The Conusor grants the Reversion of such lands which *J: S.* hath in execution for ten years, by force of a Statute-Merchant, the Grant is good, and the Grantee shall have a *Scire facias* against the Conusor, who attorned upon the Grant of the Fine within the Term, with speciall allegation that he hath levied the monies by casuall profits, &c. entered after the Term, *32 E: 3. Scire facias 101*.

*See 44 E: 3. 21*. The like Grant by Fine of a Reversion of him who had execution of a Recognisance.

X. Where a Grant of Rent out of the Reversion, or such like thing which doth not lye in Demesne, is good, and when such Rent shall begin.

A Man makes a Lease for life rendring two shillings ten pence of rent, afterwards he granted the two shillings ten pence rent to a stranger, *appropinquum* out of the Tenements, &c. he seised died, the Tenant died,



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it was holde n his Heire might claim it as a new Rent, charging the Reversion, by *Schard* and others, notwithstanding the Seisin of his Ancestors of the said Rent, first reserved, and notwithstanding that there were no word that the Ancestor should have it to him and his Heirs for the life of the stranger. So a Reversion charged without expresse words of Reversion, 33 *Aff*: 4. *Grants* 78.

9 H. 6. 52. b by  
Babbington ac.

A man leaseth for years, and afterwards grants a Rent-charge, this is good to charge the Reversion, *vi*: 5 H: 5. 8. So of a Lease for life, 38 *E*: 3. 5. And in the first case it was agreed, that the Lessor shall be charged before the Term expire, if the Lessor surrender to him, because the Term is extinct: Otherwise it is, if the Lessee grant to him parcell of the Term, because there he is in by him, and the Reversion is not executed, 5 H: 5. 8.

See 10 *E*: 4. 4. Where *Danby* and *Needham* say, If the Beasts of the Grantor come upon the land, during the possession of the Termor, the Grantee may well distra in them. *Moile* denied that, because the land is discharged during the Term: And so saies *Thirn* and *Hankford*, 14 H: 4. 31. Where a man granted a Rent out of land wherein he had nothing, &c. because the land is discharged, see 26 H: 8. 5. and 33 *E*: 3. 5. It shall not take effect till the Demean come to the Reversion.

In a *Darein presentment*, the Defendant doth release and quit claim to the Plaintiff all the right which he hath unto the Advowson in perpetuum, and for his Release, the Plaintiff with the assent of the Ordinary, grants to the Defendant twenty shillings annuall rent in fee, issuing out of the Church *percipiend. per manus persona, &c.* And agreed to be a good charge in perpetuity, because it appeared that the Church was void at the time, &c. 31 *E*: 3. *Grants* 90.

See 38 *E*: 3. 5. That a Fine of the Patron alone shall never bind the Church, yet it was an ancient Fine, but it doth not appear there that the Ordinary did consent, nor that the Church was void at the time. And *Fitz.* abridging the case, *Charge* 5. is of opinion, that the Patron and Parson cannot charge the Church in perpetuity without the Ordinary.

Upon debate of an Advowson betwixt an Abbot and T. the Abbot acknowledged by Fine, &c. And T. granted that every Presentee should pay twenty shillings annuall Rent to the Abbot in Fee, all was done by assent of the Ordinary, &c. this was good, and shall bind the Parson, by whomsoever he is presented, &c. 6 *E*: 3. 55. 7 *E*: 3. 40. 7 *E*: 27. and 43. A Grant of the Patron alone, to take of the Church is good in perpetuity by confirmation of the Parson, and confirmation of the Ordinary afterwards, &c. A Distresse taken in the Church by Books 8 H: 5. 4.

A Grant of the Advowson in fee, reserving ten pounds of rent due before, &c. the Church is charged with it, and a Distresse limited in other land is but a penalty 29 *E*: 3. *Aff*: 366.

Assise of a rent granted to take of the Mannor of S. and because the Demeans of the Mannor of which the Grantor was seised at the time of the Grant, was in divers Towns not named in the Writ, for which the Writ was abated, which should not, although that the Services of the Mannor

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Mannor had extended into S. and other Towns, because they were not charged, vi: 12 E: 3. Charge 12.

Upon *Rationabilibus divisi* three shillings of rent was allotted to one for a Piscary, divided to another, and that by Fine, and it was holden that it was issuing out of the Piscary, not of the Soil, &c. And the party might have a *Scire facias* to execute it, 32 E: 3. *Scire facias* 100.

XI. *Where the Grant of a common person of an Office is good, and where the Grantee may make an Assignee, or Deputy.*

**H** Granted to T. *Officium Messoris Manerii de P. capiend. tot quar-*  
*terna blad. annuatim pro predict. officio faciend. ad terminum vite sue:*  
And in the end the specialty was, *Et predict. H. concessit A. uxori dicti the*  
Grantee, *Dilectum officium habend. predict. &c. percipiend. ad totam vitam*  
*suum in omnibus sicut predict. T. cepit.* And it seemed to the Court a good  
Grant of the Office, and also to have the Corn, &c. Yet *Schard* there said,  
that by generall Recovery of an Office to which the profits are annexed,  
by anew Grant, &c. that peradventure the profits shall not be recovered,  
as they should be if they had not been appendant to the Office time out  
of mind, &c. 30 Aff: 4.

Note, a Collector, Commissioner, Justice of Peace, of Oyer and Termi-  
ner, and Assize, cannot grant their Offices over, and therefore their Depu-  
ties or Servants shall not have aid of the King, and that by the Court  
it is holden a good difference, 9 H 6. 21. *Aid of the King* 17.

XII. *Where the Grant of Tenant at Will, or at sufferance, or of Guardian by Nurture is good.*

**D**ower brought against A. and B. his wife, as Guardians, who  
say, that they have nothing but of the Lease of I. to whom the  
King leased the same at Will, rendring, &c. who granted to them their  
Estate, for which the wife was driven to sue to the King, but if the King  
had leased during the nonage, she ought to answer by the Statute of Bi-  
gonis, 8 E: 2. *Dower* 169.

The *Prochein amy* seised the Ward, and granted it over, and the Gran-  
tee devised the same by his Will, 26 E: 3. 11. *Guard* 159. Grant of such  
Guardian 33 E: 3. *Guards* 161. and 163. where he granted upon Condi-  
tion, and 8 E: 4. 7. Guardian by Nurture granted, &c.

It is holden, that Tenant at Will may grant over his Estate, 8 E: 2. *Itin.*  
*Kanc: Dower* 169. *Brian contrary*, 22 E: 4. 6.

M m m m

XIII. *Where*



XIII. *Where the Grant is good, although the Grantor be misnamed, or the Grantee, or the thing granted, in name, or surname, and shall plead it per nomen &c. and where it is good made only by the proper name of the Grantor, or Grantee.*

**N**ote, if I grant a Rent to *W.S.* by the name of *W.G.* this is good, and he shall have an Assise, or distrain, and shall maintain it by the name &c. 9 E:4.43. *Grants* 23. see 4 H:6.1. contrary.

And *Littleton* there saith, If a Remainder be given to *I. S.* by the name of *W.S.* and he bring a *Formedon* in the Remainder, and shew forth that Deed, yet the Writ is good, and the Remainder vested, if he be the person. *Fitz.* Note this case, &c. and *quare*, because by this it is supposed that he may have two names of Baptisme. See *Perkins* 9. That when the King passeth by Livery, a contrary name of the Grantor, or of other Grantee in the Deed shall not hurt, because the thing passeth without the Deed, and therewith agreeth the Argument in 9 E. 4. 44. when the matter is not altogether grounded upon matter of Record, or in writing, for misnaming of the Surname. And also *Littleton* there saith, If I bring Waste by the name of *W.L.* against my Lessee for life, declaring that he holdeth of me *ex assignatione T.* who granted me the Reversion by the name of *I.S.* this is good, see 3 H:6.25. 1 H:7. *Feoffmenss* 30. 15 H:7. *Perkins* 8.

A *Formedon* in the Remainder by *H.S.* shewing a specialty which proved the Reversion granted to *H.N.* yet all is good, if the same person, 6 E 3.24. so 8 E:3.19. Where *Adam V.* brought a *Formedon* in Remainder, upon a Remainder tailed to *A.* Son of *R.* and good, if the same person: See the saying of *Babbington*, 11 H.6.52.

If an Abbot grant an Annuity by the name of *R.* where his name is *T.* yet the Grant is good, and it shall be no plea for the Successor, that he had no such Predecessor *R.* &c. 27 E:3.9. *Grants* 67. *Perkins* saith fol. 9. That is to be intended, if there be no other Abbot of the same name.

In *Avowry*, Title was made because that *R.* great Grandfather of the Plaintiff granted himself to be bound in an annuall rent of twenty shillings, &c. and bound all his lands in *D.* to Distresse, &c. The Plaintiff said, that there was no such name *R.* his Grandfather, &c. and the Plea not allowed, but he was forced to answer to the Deed, whether it was the Deed of his Ancestor generally, 4 E:3.44. See the Book, where it seems he might have said, no such Ancestor *R.* but it is not material, although he was not his Grandfather, &c. *Avowry* 165.

*Hankford* saith, If I release, &c. by the name of *T.* whereas my name is *W.* yet this is good, &c. 11 H.4.26.

*Quid juris clamat*, the Note was, that *G.* Son of *T.* gave, &c. the Tenant said, that *G.* was Son of *R.* who leased to him, &c. and was thereupon discharged, for *Stone* said, That a Fine which shall be good ought

to be such, that no debate arise upon it, *P: 11 E. 3. Quid juris clamat 2.*  
 Annuity against the Prior of S. *Johus* of *Jerusalem*, &c. and declared, that  
 his Predecessor granted by the name of Prior of the Hospitall of S. *Johus*,  
 &c. and maintainable by the opinion of the Court, *11 H: 4. 61. Vari-*  
*ant 9.*

Note, where an Abbot, &c. grants an Annuity, the Grantee may well  
 have an Action against the Successor generall, and declare, that one *I: S:*  
 &c. Predecessor granted; for it behoveth not that his proper name be  
 in the Deed, &c. *T: 20 E: 3. Annuity 53.*

So it is of a Duke, &c. for the name of Dignity was sufficient certainty,  
 and the name is not put to other intent, but for certainty of the person,  
*Perkins 8.*

The Plaintiff in an Assise of Rent made Title by Deed, which was, *Sci-*  
*ent &c. Quod ego O. concessi pro me & hered: meis*, to be bound to *B:* in  
 forty shillings, *solvend: sibi, de Manerio meo de D: annuatim, &c. quam-*  
*dius tenemus manerium predict.* and the Assise was awarded upon the  
 Title, *M. 14 E. 2. Grants 92.* but a Grant by a surname alone is not good,  
 by *Perkins 8.*

*Hank: saith*, If land be intailed to me by Fine, by the name of *J.* and  
 after he is confirmed by the Bishop by the name of *T.* yet he may well  
 execute it by the name of *T.* and shall maintain the Grant *per nomen &c.*  
*See 22 R. 2. Brief 936. See of this matter, 9 E. 3. 13. and 18 H. 6. 34.*

*Moile and Ashton Justices*, say, If the Parson, Patron and Ordinary  
 grant an annuity out of the Church of Saint *Peter* and Saint *Paul*, where  
 in truth the Church is founded onely in the name of Saint *Pete*; the Suc-  
 cessor of the Parson may well avoid this Charge, and so *è contra 35 H. 6.*  
*3. Warrant of Atturney 3.*

An Advowson passed to *J. S.* by grant, and that he should name at eve-  
 ry avoidance, and no other should be presented, *24 E. 3. Quare Impedit*  
*26. See of such Grant, 14 H: 4. 11. 1 H 5. 2. and 14 E: 4. 2. 19 E: 3. Quare*  
*Impedit 154.*

*See 1 Ass: 11. and 3 Ass 4* where land was given to *R:* and *S:* his wife  
 in tail (where indeed this wife had to name *I.*) the Remainder to the  
 right Heirs of *R.* who died without Issue on *I.* his Daughter of the first  
 wife entred, *I.* and her second husband put her out, and she brought an  
 Assise, and upon the truth found, she had Seisin by award of the Court;  
 Afterwards *I.* and his wife had execution by *Scire facias* against the wife  
 by default, who brought an Assise, and it was found as before; yet the  
 the opinion was against the Plaintiff because the Fine was not defeated, but  
 being lawfully executed by due processe of Law, should not be defeated  
 by such a way. And *Scorpe* said, That the wife might have estopped the  
 Heire, by saying she had to name *I.* by the Fine of the Ancestor, being  
 the same person.

And *Scorpe* saith, That a woman shall not take any thing by the Feoff-  
 ment to the husband and her, if she be misnamed, notwithstanding the  
 Livery be to them both, *3 Ass: 4.* A man.



## Grants of common Persons.

A man may well claim a House, Mill, Toft by the generall name of Carue of Land, 4 E: 3. 47.

Note by *Hank*, for Law, If Land be given to a man and *B.* his wife in speciall tail, where her name is *A.*: yet this is good in all, by reason of the Livery, and 1 H: 5. 8. *acm* So saith *Hank* of a Feoffment to a man, & *uxori suæ*, not naming her name, 1 H: 5. 8.

### XIV. Where a Grant made without Deed is good, and what things shall passe without Deed, what not.

**N**Ote, the Wardship of the body and land may well be granted over without Deed, H: 12 E: 3. Grants 59 25 E: 3. 3. And the Grantee devised it by Will, and the Devisee in a Writ of Ward brought against him, need not shew the first Deed, nor the Will, 26 E: 3. 11.

Note, where the Lease is not traversable, as in Ravishment, or Ejection of Ward, or Forfeiture, the Deed needeth not to be shewed, 14 E: 3. *Action upon the Statute* 17. So in an intrusion of a Ward, 22 R: 2. *Brief* 937.

And by Deed the Lord may grant the Wardship before any Seizure made *per Curiam*, 11 R: 2. Counter-plea of Voucher 35. But it is holden there that the Grantee of the Wardship shall not vouch without shewing a Deed, for the mischief that the Lord might grant it every day to a severall man, for the Grant is good without livery of the Ward, so there ought to be a specialty of such speciall Voucher, and see 46 E: 3. 25. and 25 E: 3. 3. contrary.

Note, that the remainder passeth by Livery made to the particular Tenant, and therefore he need not to declare upon the Deed in *Formedon* in the Remainder, 10 E: 4. 1. Grants 24

See 18 H: 8. 3. That a man cannot make Title by Remainder, by way of Bar, without shewing a Deed of the Remainder, if it hath not been executed in him.

So the Heir of the Grantee of a Reversion in tail shall have a good *Formedon* in the Discender against the Abator upon the death of his Father, &c. without shewing a Deed of the Grant, because it is executed, 11 H: 3. 37. See a good case, 8 E: 3. 33. The same Law of an Advowson in grosse, if the Grantee hath once presented, 11 H: 4. 3.

A Rent may be well granted by one Parcener to another, upon equality of Partition without a Deed: And the Bailly shall avow upon the Feoffee of him who granted it without the shewing the Deed, 2 H: 6. 14. *Avowry* 3. 45 E: 3. 21. 8 E: 3. 16.

An Advowson may be well granted without Deed by Livery, 43 E: 3. 1. 26 H: 8. 2. 5 H: 7. 37. by *Vavisor*, and 8 H: 7. 3. *contra*.

Note, that the Grantee of the Reversion may well distrain for the rent, although

although he hath not a specialty of the Grant, having Attornment of the Tenant, 42 E:3.4. and 2 E:3.14. such a Grantee brought Intrusion after Attornment, and good, vi: 6 E:3.40. 15 E:4.18. see contrary, 10 E:3.9.

A Stream was demanded in the land of another without a Deed, and well, for it was said, that the Soile shall be recovered, 8 E:3.13.

It is said, that the Vesture of the land shall passe without Deed, because it shall passe by the Livery, 17 E:4.6. by *Littleton*: But *Brian* saith, That it passeth by Grant as a Term, so without Deed, 3 A:6.13. 5 H:7.10.

Tythes by themselves do not passe without Deed, but if the whole Rectory be granted for years without Deed, this is good, and the Tythes shall passe also, 21 H:7.21. *Choke* saith, that a Lease of the Tythes without Deed is good, 9 E:4. *Feoffments* 92.

Yet if the Ter-tenant and the Grantee of a Rent-charge make a Feoffment jointly of the land, the rent shall not passe by it without a Deed, 14 H:7.4.

A Use may well be sold without a Deed, 7 E:4. *Subpœna* 5. *Perkins* 14. 14. 14.

If a man devise land for life, and wills that his Executors shall sell the Reversion, their sale shall be good without Deed, 19 H:6.23.

Note, that a Villain in Grosse, Common, Rent, Reversion, &c. passe not without Deed, because not by Livery, 6 H:7.3.

*Starkey* saith, That a Termor of a Villain may grant parcell of his land without Deed, which *Brian* denied, and saith, that he cannot no more then the Lessor who cannot grant a rent reserved upon a Lease for years for parcell of his Term, 20 E:4.16.

Note by *Catesby*, A man cannot lease a Warren without Deed, nor grant a Presentment *Pro hac vice* without Deed, which is but a Chattell, 9 E:4. *Feoffments* 92.

The gift of Corn growing is good by word, although they are not severed in the life of the Grantor: So of Trees, if the Grantor be not Tenant in tail of the land, 18 E:4.22. *Perkins* 13.

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XV. Where the Grantee may grant the thing over, and where the Heire shall not be bound by the Grant of his Father, of a thing in which he hath Fee.

Note, If a Parsonage or Vicaridge be charged with an Annuity, he who hath the Annuity may grant it over: But if an Annuity be granted to me *Pro consilio*, &c. I cannot grant it over; No more then if he grant me to be his Steward, or Parker: But a Way, or Common in grosse may be granted over.

He who hath an Annuity by Prescription may grant it over, because it is an inheritance, and it is not a thing merely in Action, by *Thorpe*, 41 E:3.27. *Catesby*



## Grants of common Persons.

*Catesby* agrees, 21 E:4. 10. But *Brian* saith, 22 E: 4. 18. That an Annuity which is not an Inheritance shall not be granted over, nor a Corrody incertain, nor Est overs incertain, nor a Liberty grant to the person, as to ride my Horse, 22 E. 4. 6.

A Warranty granted to me by the King cannot be granted over, nor the Office of Carver, &c. *Catesby* saith, That a Common without number may be granted over, 21 E:4. 84. 36 Aff:3.

A man seised of a Common in grosse, granted it in fee, the Grantee granted it over before any Seisin of it, and a good Grant, 36 Aff:3.

Common was granted to the husband and wife, and to the Heirs of the Husband, who dyed, the Heir granted the Common to a stranger, the wife died: And the opinion of the Court was, that the Grantee should not have the Common, as *Fitz* in his Abridgment, the cause is not expressed, wherefore the Grant should not be good, for it was a Common without number, 34 Aff: 14. Grants 94. see 27 H: 8. 10. And note, if it may stand with the reason there for to grant such Common over.

No Office of Trust can be granted over, 39 H:6. 34. 11 E:4. 1. 21 E:4. 20. and 84.

If the Lord who hath a Mill and Suit of the Tenants of the Mannor, grant over the Mill and the Suit of the Tenants, and the Grantee is seised accordingly, yet it shall not bind the Heir, but he shall have againe the Suit, if he make a new Mill, 19 E:2. Aff:399.

Note, that Common, or a Way may be appendant to a house, or onely to arrable land, as it is holden, 27 H:6. 34. see 22 H:6. 43. but such Way, or Common cannot be severed without Deed, but Common appurtenant may be to him who hath not the house, 5 H:7. 7.

Tenant at Will cannot grant over his Estate, by *Brian*, 22 E: 4. 6. So Divine Service cannot be granted over, by *Rolfe*, 9 H: 6. 13. But Masses and Matines reserved upon Feoffment were granted over, as is 4 E:3. 51.

### XVI. Where a man may grant the Reversion of Tenant in Taile, or of him who holdeth but for life of the Lessor.

**N**ote, That the Donor may grant the Reversion of Tenant in tail, and so may the King, and for these matters of Record, the Reversion is in the Grantee without Attornment, 12 E:4. 3. 3 E:3. *Per qua servitia* 17. 26 Aff:66.

So that Reversion in *Esse*, but if land be given to two, and to the Heirs of one of them, he who hath the Fee cannot grant it over there. Also it is there said, That if a man make a Lease for life, the Remainder for life, and grants the reversion of the Ter-tenant, this is void, because it cannot take effect according to the Grant: He who hath but a bare right to a Reversion cannot grant it over, 12 E:4. 3. 11 E:4. 1. 21 E:4. 20. and 84.

A man makes a lease for his own life, and granted the Reversion by his wife, which at length was recorded, yet the Reversion is to remain to the Heire, and not to him 9 E:3. 14. 10 E:3. 49. 42 E:3. 18. that such Lease shall have Waste, and shall enter for the forfeiture.

*Where a Grant doth enure to two Entries, which shall be taken, and when both shall be taken.*

If the Donor grant the Services of Tenant in tail, not speaking of the Reversion, yet they passe, and he shall be driven to attorn, 3 E:3. 11. *North. Per que servitia 17.*

See 13 E:4. 3. Where Catesby held such a Grant void, because the Services shall not be severed from the Reversion, and the same shall not passe to him, no more then if he grant the Homage of the Tenant in Knights service, reserving the other Services, but 66 E:3. 26. it is admitted that the Grant of the Services of the Tenant in tail is good.

A man grants Common for ten beasts in *pasturis suis*, to go with his beasts. And in a wry for damage feasant, no regard was taken, as if to put his cattle in the place where, &c. 11 E:3. Common 10. Of Common granted, *ubique*, and *quandocunque*, &c. see 9 H:6.

A man grants Common, &c. *infra metas*, and bounds of the Common of D. now if there be a place which is his severall, and another place which is common to others, that shall be only, by Hill, 15 E:3. Common 12.

Where it is *infra metas* & *boundes de D.* not of the Common of D. Note, that upon a generall Grant of Common, a man shall not have Common, but for Cattel Commonable, not for Hogs, 9 H:6. And in Land which is the most convenient for Common, not in a Garden, &c.

A Rent service which I have in D. shall not passe by the Grant of all my Annuities there, by *Prisoit*, 33 H:6. 34. 19 H:6. 4.

XVII. Where the Tenant of the Land cannot charge the Land by his Grant with Common, &c. during his Estate, where according to his Estate.

As he saith, If I grant you leave to take so many Fish in my Fish pond, as you will spend in your house, I may well make the like Grant to another &c. *Falshorpe* not so, for if I grant you Common for a hundred sheep, I cannot Common there to another, unless you have sufficient land that which I grant to the other, so in the first case. *Passon* denied 13 H:6. 30.

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## Grants of common Persons.

The Abbot and Covent, reciting by their Deed, *Quod cum nos tenemus Priori, &c. in 4. marcis annuis secundum quod patet per quandam compositionem, &c. in dicta compositione non inseritur, ad quem terminum, nec aliud etus redditus solvatur, Noverint, &c. Quod nos permittimus & tenemus solvere, &c. ad festum sancta Trin. apud B.* And it was adjudged in a Writ of Annuity that the Abbot should be charged by that Deed, without shewing any thing of the Composition, and although there were no composition as it there seems, *P:16 E:3. Grants 54. vel 55.*

Note, one Tenant in Common of a Wood, cannot grant to a stranger to cut Wood, or to agift his Cattell, but after the death of such Grantor the other shall have an Action for the whole, and shall recover his damages *45 E:3. 13. Grants 48.*

The charge of one Joynt-tenant is good, if he do survive, *10 E:3. 34. 17 E:2. Charge 15.*

A man seised of a Term in the right of his wife, grants a Rent-charge and dieth, the Charge is determined; and the wife shall hold the land discharged, although she hath paid the Rent after the death of her husband, *7 H:6. 2. 9 H:6. 52.*

The same Law, if the Issue in tail pay a Rent granted by his Father, or the Grantor himself after the Term for which it is granted; and the A-linee of the wife shall take advantage of that matter; and it is void, although it was granted for Divine Service, so *quid pro quo, 9 H:6. 31.*

*Corresmore* saith, If the elder Brother dieth, his wife young with Child, and the younger Brother entreth and charge the land; that by the birth of the Issue, the same shall be avoided, *&c. 9 H:6. 52.*

If a man grants a Rent-charge, and afterwards his Mother recovereth Dower against him, and the Sheriff assignes her that land, she shall hold it discharged, *10 H:6. Charge 3.*

Note, if the Conusor charge the land mean between the Statute acknowledged, and the execution sued, that the Conuzee shall hold it discharged, *T:14 E:3. Charge 11.*

The charge of the Tenant shall stand good against the Guardian in Knights-service, during his time, *3 E:3. Itin: North: 176.*

### XVIII. Where the Grant is good by reason of use in the thing granted by the Statute of 1 R. 3. Cap. 1.

**I**F a man be seised to the use of a woman, of an Advowson, and she take husband, he and his wife may well grant it, and it shall be good during the Coverture, as if they themselves had been seised of it, in the right of the wife, *6 H:7. 3 Grants 39.*

*A.* enfeofeth *B.* to the use of *C.* for life and after his death to the use of *D.* and the Heirs of his body, *C.* may well enter and make a Feoffment, and *B.* shall enter after her death; so *D.* may well make a Feoffment.

ment, and after his death *B.* may enter, or the Issue, according to the Statute, for by his death the Feoffment is become as it was at the Common Law, i.e. a disseisin to the Feoffee &c. 4 H. 7. 18. Feoffments 31.

A Lease made by *Cestuy que use* shall not develt the Reversion of the Feoffees, but the same is in them, and the Termor shall have aid of them, 8 H. 7. 8. and therewith agrees 27 H. 7. 22. and 5 H. 7. 5.

But if *Cestuy que use* doth not lease c. presently after his entry, this is a disseisin to the Feoffees, and they shall have an Assise, although that the Lease or Feoffment be now made, 5 H. 7. 5.

A Rent-charge granted out the Land, by *Cestuy que use*, is good by the Statute, 5 H. 7. 6. B.

Note, the Feoffees of Land in use of an infant may grant ordinary offices and fees in defence of the Lands, and they shall be allowed at the full age of the heir, but not fees or annuities for life &c. and *Keble* saith, that upon necessity they may grant an annuity *pro consilio*, if there be no profits at the time to defend the title of the Land &c. 8 H. 7. 11.

Note, if *Cestuy que use* make a Feoffment to a stranger, and a Letter of Attourney to another to make Liverie, this is a disseisin to the Feoffees and is out of the Statute. So if he devise by will, that his Executors, or J.S. shall sell the Land, this is void, for the Statute doth not give that power, but the Executors may well sell the use &c. 9 H. 7. 26.

Grant of Trees or Corn by *Cestuy que use* to a stranger is good, yet he cannot take them, 15 H. 7. 2. See 14 H. 8. 7. and 27 H. 8. 5. also he may well devise that his Executors shall sell the Trees growing upon the Land, 14 H. 22. 14.

*Cestuy que use* sells the Lands, and the opinion that by that the use is presently in the Vendee, and that he may enter and make a Feoffment according to the Statute, yet in that Case the money was not payed &c. vi. 21 H. 7. 6. and 27 H. 8. 20 and 30.

Where one may grant or sell a thing which he hath not, and where not, and yet by possibility he may have it.

AN Abbot, Parson of a Church sold to *T.* all the Corn tithable, within the Parish during seven years and good, as if he sell the tithe of lambs at the Feast of Christmas before &c. So if Tenant for life sell the profits of his Lands for two years to come, 21 H. 6. 43. Grants 40. Perkins 20. See the book, for a difference was taken betwixt a Sale and a grant, or Lease, or that the sale is not so executory, also betwixt a Sale for the present year, and for two years to come, yet all was awarded to be good, and that the Sale is a Grant in it self, as the Sale of profits of Court to come &c.

The Earl of *L.* granted a ward &c. and granted by the same Deed, that



that if he die within age, his Heir being within age, that the Grantee should have the heir of him, and so *de herede in herede*, till come Heir came of full age, afterwards one T. who held of the Earl in Knights service died, his heir within age, after the Ward died within age, another Infant being his heir, yet it was agreed that the Grantee should not have the Wardship of him, but the Earl might well hold the Ward, *E. 3. 3. Grants 65.*

The Lord granted to his Tenant, that he should do his suit of Court due at his Mannour of D. at his Mannour of S. for the ease of the Tenant, by that the suit due before, is not extinct but yet the Lord may have it when it pleaseth him to demand it, and the other suit is not but in allowance, for the ancient suit doth not passe by such Grant, *E. 2. 2. Affirm upon the Statute 24.*

Trespasse of goods taken, the Defendant said, that the Plaintiff was possessed and sold the goods to T. who left them in the custodie of the Plaintiff, and sold them to the Defendant, the Plaintiff said, that he was possessed untill the Defendant took them without that, that T. sold them before, and that was admitted a good answer, yet Danby said, that if T. sell them to the Defendant after the taking, that this is good, *M. 2. E. 4. 16. Affirm 114. Perkins 20.* See 6 H. 7. 9: where a gift of goods to him who had taken them before, is void, if it be not by Deed, because there is but a Right, *Kavafour* true, that a man cannot give or extinguish a Right by word, whether it be in a personall or a reall thing, *Done 7.*

See 11 H. 4: 24. Where a man borrowed sheep for a certain time, and within the time a stranger took away the sheep &c: and he who had the property in them sold them to the Trespasser, *Hanckford* said, that the wrong was purged by the sale, as a Release to the second Dissector, so as a generall action of Trespasse *vi & armis* did not lie, *Thos and Culpepper* contrary, *Trespasse 171. vide 9 H. 6. 64. Paston.*

A grant of a thing which is in the Custodie of another is good, but if he grant it upon condition, as if he himself do recover it, this is void by *Paston*, 9 H. 6. 6. 4.

A man may well grant his wooll which he shall have for the year to come, the Term not being yet begun, and so a man may grant a Rent before Seisin of it, *Perkins 20: 37 H. 6: 19:*

Rent and Common which strangers occupie and take without Title may be well granted, *Perkins 21.*

XIX. What words shall be sufficient to make a Grant, and where a Grant shall be to him who is a stranger to the Deed, and where a Recital shall make the Grant good, where not.

THE Deed of Grant was such, *Obligo me tali & uxori ejus filia* Vide 27 H. 8.  
*mea, & hered. de corpore eorum, in uno annuali redditu de & c. perci-* 17 by Fitzh.  
*piand. annuatim de manerio meo de C. & oblige manerium meum predict.* Obligo is a  
*& omnia bona & catalla in manerio predict. existen. ad districtionem perquad* word of  
*Balleum Domini Regis,* and the same was adjudged a good Grant to Grant, vide 40  
charge the Land, and that by distresse of the grantees, and the naming E. 3. 1.  
of the Bailiff is to no purpose, for the King is not to have advantage of 22 E. 4. 12. 8 E.  
it & c. 46 E. 3. 18 Grants 49. 4 acc.

If a man granted certain Corn & c. to B. by such words, *Obligo heredibus*  
*meis* to the same B. in five quarters of corn and barley by the year & c.  
and because the Heir of the Grantor had payed it before the death of the  
anterior, he was put to answer in a writ of annuity upon such a naughty  
grant, T. 31 E. 3. Grants 85.

In an Assise of a Rent, the Tenant pleaded out of his Fee, the plaintiff  
for Title shewed a Deed, which was, *Sciant & c. Quod ego O. concessi pra-*  
*me & heredibus meis teneri B. now plaintiff in & c. solvend sibi de manerio*  
*& c. annuatim, quamdiu nos tenebimus manerium predict.* and shewed that  
it was descended to the Tenant, and the Tenant did demurre upon the  
Title, and the Assise was awarded, 14 E. 2. Grants 92.

An Abbot granted to J. S. *unum toftum & c.* and the Deed was, that pro  
*his concessione, idem J. S. renunciavit totam communiam quam cum averiis*  
*his habere consuevit & c.* And it was agreed, that that deed was not  
worth any thing against J. S. because he doth not say, that he hath re-  
nounced, also the words of the Abbot are in the first person, and the words  
of J. S. in the third person, so as it is onely the Deed of the Abbot, 9 H. 6.  
55. Pedfments 5.

Note, that by grant of the Reversions of all Tenants, *tam liberorum,*  
*quam natorum,* all Reversions of all his Tenants passe, as if they had  
been specially named, T. 5. E. 2. Grants 68.

In an Assise of Rent, the Plaintiff made Title by a Deed, which was,  
*Know & c. we P. and E. his wife, have bound all our goods and all our*  
*lands which we have in the Town of B. to the Distresse of J. S. and J.*  
*his son, and to the Heirs of J. to take by the year to them, their heirs and*  
*assignes, without saying, at what place or day, yet all was good,* 3 E. 3.  
12. Assise 171.

An Abbot granted to J. S. a certain Corody and a Liverie everie year  
for his boy, nor naming him, this is good, and J. S. shall have an Assise  
of it, but the Assise would not have layen for J. S. if his boy had been na-  
med & c. M. 16. E. 2. Assise 371. Thorp acc. 18 E. 3. 2.



If the Guardian doth assign Dower to the wife by Indenture, and because it is more worth then her Dower, she grants a Rent with clause of Distresse to the Guardian, untill the full age of the heir. *Thury* saith, that the heir at his full age shall also distrain for that Rent, 17 E. 3. 9. *Advowry* 95. See there that such Grant of the second Husband and wife could not bind the woman.

*Affise of Profits &c.* he shewed a Deed by which 7. had granted to H. twenty loads of Wood, *quorum predicti H. had sixteen loads, ex dono P. patris mei &c.* and although that was false, yet the Grant is good for the twenty loads &c. 20 *Aff. 8. Affise* 217.

If a man reciting that he hath 20 l. of Rent in D. grants 10 l. of the 20 l. where he hath no Rent there, the Grant is void, but if it be to receive the 20 l. his person shall be charged, 9 H. 6. 53.

A man makes a Lease for life rendring Rent, and grants the same Rent to a stranger, and dieth, the heir of the Grantor entreth, and by his deed confirmeth the said Rent to the Grantee with clause of Distresse, reciting the Grant of the Father &c. this is a good Rent-charge, without the word Grant, yet the Rent was determined in Law, but not extend, by *Hill*, 14 E. 3. *Affise* 109. See 26 *Aff. 38*.

A Grant to distrain for so much Rent, is good Rent-charge, 9 H. 6. 9. 26 *Aff. 38*.

Lessor for 10 years makes another Deed to the Lessee, reciting the Lease, and he wills that the Lessee and his heirs shall hold the Land for the life of the Lessor, so that he can nothing claim &c. this is good, yet there is no word of Grant, or of Confirmation, 7 E. 3. 9.

If 7. S. reciting by his Deed, that his name is 1. S. by the same Deed grants an annuity by the name of T. S. yet this grant is good upon the whole Deed, *Perkins* 8.

But recitall shall not hurt a good Grant, as if a woman reciteth by her Deed of Grant, that she is a Woman covert with husband, who is a single woman, yet her Grant is good, 3 E. 3. *Itin. North estoppel* 132. Also a false recitall shall not make good a naughty Deed, as if a Feme Covert recite by Deed that she is a Feme sole &c. 1 H. 5. 12. *vide* 4 H. 6. 1.

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XX. Where a Grant of an Advowson by him who is Parson imparsoned is good.

**A**N Abbot Parson imparsoned, granted the same Church with the assent of the Covent before the Statute of *Marlebridge* to another Abbot with all the Right which he had in the Advowson of the same Church, it was holden a good grant, for the Advowson of the Parsonage whereof he was seised to his own use, T. 16 E. 3. *Grants* 56.

An Abbot Parson imparsoned leaseth the Church, with all the profits

its and appurtenances, it is good for that of which he was seised, but the Vicarage doth not passe, 17 E.3.51. *Grants* 57. See C.9. part 10 in Candaces case.

Herle saith, if the Templers after appropriation to them made had granted their estates to the Hospitallers of S. Johns, yet they should not have the appropriation; for the Templers could not grant that to make it an appropriation to another, 3 E.3.11. *Grants* 70. C.11. part 10. the reason is because none can make appropriation but the King.

XXI. Where the Grant of the Parsonage makes the Patronage of the Vicarage to passe, where not, and where a Grant of the Advowson of the Vicarage, is good.

NOTE, by the generall Grant of the Church, and of all his Right in the Advowson of the Church, with all the profits and appurtenances made by him who is Parson imparsonnee, and so seised of the Parsonage to his proper use, and of the Vicarage as Patron, the Advowson of the Vicarage shall not passe without words, for it is severed from the Parsonage, and not appendant to it, and the Grant stands by it self for that whereof the Grantor was actually seised, 16 E.3. *Grants* 56. 17 E.3.51. & 56.

So of a Recoverie of a Parsonage, if not that the Title of the Action be before the severance of the Vicarage from the Parsonage, 17 E.3.51. and therewith agrees Berry, 5 E.2. *Quare impedit* 165.

Vide 16 E.3. *Quare impedit* 145. by Parning and Hill: The Ordinary cannot make a Vicar without the assent of the Patron, which implies the Patronage of the Vicar, is in the Patron of the Parsonage.

Fortescue saith, that the Advowson of the Parsonage and Vicarage are severall, and each may be granted by it self, and a writ of Right of Advowson lieth of each of them severally, and the one shall pay Tithes to the other, and shall have an action against the other, 31 H.6.13. *Judgment* 1.

Bass. alledged, that one J: did recover the Parsonage against T: in a writ of Right of Advowson, and afterwards did recover the Vicarage in another action against the same person, 5 E.2: *Quare impedit* 165.

So two Advowsons of one Church, and the Parson imparsonnee hath not the Vicarage as Patron or Ordinary, but as Patron &c: as Abbot Patron makes appropriation &c: 5 E.2: *Quare impedit* 165: a good case, Vide 7: E.3: *Quare impedit* 21: 50 E.3. 26 and 24 E.3. *Quare impedit* 22. Where it seems the Advowson of the Vicarage doth belong to the Parson.

Vide 31 H.6:13: The Vicar is but as substitute to the Parson, and his endowment at first was onely for the ease of the Parson; and the chief care of souls lieth upon the Parson, and it belongs to him to see the cure served with a sufficient man; and therefore it seems reasonable, that the Patronage of the Vicarage do belong to the Parson, and not to the Patron of the Parsonage. Vide 17 E. 2.. *Quare impedit* 178. Where an Abbot who had an Advowson appropriate upon which there was a vicarage endowment, did present to the Vicarage.

A man.



A man by Fine grants a Parsonage (saving the Presentation to the Vicaridge to him and his Heirs) so as he and his Heirs present the Vicar to the Grantee, a Prior and Successors, and so from Vicar to Vicar, and admitted a good Fine, *Fitz.* And so it seems the Vicaridge had passed, &c. had not been reserved, 2 H. 3. *Grants* 89. *F.N.B.* 33.b.

XXII. Where a Grant shall be good for a greater Estate then the Grantor hath, and where it shall be good for ever.

**N**Ote, If Tenant by the Curtesie granteth a rent by Fine, and dieth, this Fine shall be well executed by *Scire facias*, if he in the reversion hath not defeated it, by entry into the land, whether the rent happen in the time of the Tenant by the Curtesie, or otherwise, &c. 31 E. 3. *Grants* 60.

If Tenant for life granteth a Rent-charge in fee, and dieth, be in the Reversion entreth and confirmeth it with clause of Distresse, this is good, because the Charge took effect at the time of the Grant, and is not defeated by Judgment before the Confirmation, 14 Aff. 14. 14 E. 3. *Aff.* 109. 26 Aff. 38.

*Plur.* H. 7. 28. The Confirmation is good; for that which I may defeat by Entry, or otherwise, I may make good by Confirmation.

*K. Lib.* 131. p. 331. 529. C. 1 part, *Mayores* case, 147. C. *Lib.* 300. In respect of the Grantor, the rent is distinct by his death, and if the Distraitor of the Rent be not expressed in the Deed, the Confirmation had not enlarged it, nor made it absolute.

Grantee, of a Rent for term of life, grants it over in fee, this is good against the Ter-Tenant, if he cannot prove that Estate defeated by the lesin of him in the Reversion, after, &c. 14 E. 3. *Acowry* 117.

44 E. 3. 31. *Q. Davian Lum- bards case, &c.* 44 E. 3. 33

Tenant in tail grants a Rent charge in fee to him who hath an ancient right for his Release, &c. this is good, and shall bind the Issue, 44 E. 3. Charge 7. See of this matter, 24 E. 3. 8 H. 6. 23. 20 E. 4. 13. and 6 E. 3. 56.

Tenant in tail of a Reversion grants it in fee with Warranty, the Tenant attorns, and surrendreth unto the Grantee, this is a Discontinuance, and a bar with Asslets, 32 E. 3. *Discontinuance* 2.

Tenant in tail grants an Advowson, the Church void, he dieth, the Grantee shall have the Presentment, and not the Issue in tail, 9 E. 3. *Quare Impedit* 28.

XXIII. Where

XXIII. Where Services shall passe by the Grant of the Rent.

Where the Tenant holdeth by Fealty and Rent and not by Homage, the Fealty shall passe by the grant of the Rent, *Perkins* 33.44 E:3.

And so saith *Thorpe*, 29 Aff:20. But it is agreed there, that if he reserve the Seigniorie, the Grantee shall have but a Rent-seck, and therewith agrees *Mr. Littleton* in his Chapter of Rents, and *Perkins* 23.

XXIV. Where the Grant of the Patron and Ordinary without the Parson is good, to charge the Church, and where of the Patron and Parson without the Ordinary, and where of the Parson alone.

Note, that the Patron and Ordinary may charge the Church in perpetuity in the time of Vacation of the Parsonage, 31 E: 1. *Grants* 90.

2112. Annuity 53.

P:22 *Eliz:in Co:B*: by *Mead* and *Periam* Justices, The Parson with the consent of the Patron and Ordinary, might grant parcell of the Glebe land, to hold of the Parson, and therby make the Parsonage a Mannor, and so they may charge the Glebe with their common consent in perpetuity.

Also the Church shall be well discharged by the release of all Annuities made to the Patron, &c. P: 8 E: 3. Release 57. 15 H:7. 21 H:7. 41. 7 E:3

The Parson and Patron cannot charge the Church without the Ordinary, 38 E:3.5. Charge 5.

But the Parson alone having *Quid pro quo* may well charge the Church in perpetuity, 16 E:3. Annuity 24. see 12 H:4. 4. 8 H:6. 23. *V.C.Lit.* 347.

If the Parson, Patron, and Ordinary grant an Annuity, and afterwards the Parson and Patron lose in a *Quare Impedit*, yet the charge doth remain good, because they had a lawfull possession, 9 H:6 33. *5 E. 6. Dyer* 69.

But *Chantrell* saith, That if he who recovereth in a *Quare Impedit* against the Patron alone, put out the Incumbent, and he and his new Presentee grant an Annuity, and the old Incumbent re-enter, he may well avoid that charge, which *Parson* denied, 9 H:6. 33. *vi. C. Lit.* 300.

O o o o

XXV. Where



**XXV.** *Where the Grant of a Prior, Abbot, Bishop, or body Corporate, &c. is good, without the assent of the Covent after Resignation, where without the Chapter, &c. and where with them, and where not: And where it is void by Resignation.*

**A** Nnuity against an Abbot, the Plaintiff counted of the Grant of the Predecessor, who hath resigned, and is yet in life, &c. The Defendant saith, That the Predecessor was a Dilapidator, and thereof accused by the Monks, and a Suit for deprivation of him depending in the Arches, he granted the Annuity to the Plaintiff, to maintain him, &c. and when he saw, that Judgment would passe against him, he resigned, &c. yet upon the Demurrer it was adjudged that the Plaintiff should recover, H: 29 E: 3. 21. *Grants* 99.

It seems by *Thirn.* That he who hath Sequestration of the profits of the Church by a Writ of execution to the Bishop upon a Debt recovered, and before the monies are levied, the Parson resignes, &c. That he shall hold the Lands against the Successor, for being disturbed by him, he had a *Sicut alias* to the Bishop, 13 H: 4. 20.

An Affise of Eltovers against the Bishop of *Coventry* and *Lichfeild*; Title made by Grant of the Predecessor, and Confirmation of the Prior and Covent of *Co.* The Defendant said, That the Bishop of *Coventry* and *Lichfeild* were out of mind, &c. and at the time of the making, &c. was chosen by the Prior and the Covent *de Co.* and by the Dean and Chapter of *Lichfeild*, which assent is not alledged, Judgment, &c. and they were at Issue, If he who granted was chosen by the Prior and Covent alone, or by both, &c. in the time of R. 2. *Grants* 164.

A Prebendary made a Lease for years of a Mannor, the Tenant attorned, he resigned, the Lease was presently void. and the Successor did avow for rent which was due during the Term, 11 H: 4. 16.

If a Parson soly grants a Rent-charge, and resignes, the Glebe shall not be charged for such charge, is good, but during the time that he is Parson, and not during his life, *Perkins* 7. If a Dean grant a Rent-charge out of the Land which he holdeth in Common with the Chapter, this is good to charge him and his beasts with distresse, but not the beasts of the Chapter, *ibid.* If an Abbot charge by Fine, and is deposed, yet the possessions shall be charged, not if he charge by Deed, *Perkins* 7. although that the Deed be enrolled, 13 E: 3. *Itin Cornub Abbe.* 23.

But see 5 E: 6. *Dyer* 69. If a Parson make a Lease for years, or grant a Rent-charge to begin after his death, if the Patron, Ordinary, confirm it, it shall bind the Successor, vi: 19 *Eliz. Dyer* 357. acc. And see 40 E: 3. 30. 16 E: 3. *Annuity* 24. C. *Lir* 343. If the Parson with the assent of the Ordinary grant Annuity, and have *Quid pro quo*, in consideration of it, it shall bind the Successor of the Parson, though the Patron did not consent to it.

**XXVI.** Where a Grant of Annuity or Rent shall be severed by the words, *Percipiendum*, and where by the first words in the Deed; And where parcell of the Land shall be discharged, by words subsequent, or by recital.

**U**Pon debate betwixt a Prior and Abbot for two Churches, Composition was made by the Ordinary the Bishop, that the Abbot should have the Churches, and should grant unto the Prior four marks Annuity for one Church, and two marks for the other, all which was accorded unto with the assent of the Covent. The Prior brought Annuity as of four pounds of Annuity, and the Deed was to take four marks for one Church, and two for the other: and yet it was well brought, for being upon one Deed, it is but as one entire Annuity: As if *A*: grant *B*. an Annuity of twenty shillings, to take ten shillings, of such a Mannor, and ten shillings of such a Mannor, yet this is but one Annuity, and shall be demanded by one Writ, 29 *E*:3.51. *Grants* 101.

Assise of a rent, the Plaintiff claimed it as a Rent-charge, and shewed a Deed, which was, That *I. S.* granted unto the Plaintiff twenty shillings of rent to take in his Mannor of *M.* so much by the hand of one Tenant, and so much by the hand of another, and this was found, and that the Tenants were Tenants at Will; and at last Judgment was given for the Plaintiff, as of one rent issuing out of the Mannor by the Premises of the Deed. 15 *E*:3. *Charge* 9.15. *Ass*:11.

But see opinion contrary to that, 7 *E*:3.9. Where a man granted a rent in his Mannor of *D.* to take so much by the hand of such a Tenant, and so much by the hand of such, that now the Mannor is not charged, but the Tenants shall be distrained with Attornment. As a grant of a Rent in the Mannor to take in such an acre of Meadow, nothing shall be charged but the Meadow, which was agreed, where I grant a rent without limiting Estate, this is for life, but if he say further to take for ten years, he hath but an Estate for years, &c. *vi*:5 *E*:3.66. *Assise* 132.

A man grants a rent out of an acre of land in the Tenure of *B*: to take *Vi. c. 7 part*, of *B*: and his Heirs with distresse, in his Mannor of *D*: and adjudged that *Buits case*, yet that acre doth remain charged with Attornment of *B*. and so a Rent-service made a Rent-charge, *M*:1 *E*:21. and 27 *Ass*:169.

And this word *Percipiend*. and how the Charge is limited by it, see 9 *H* 6.13. and 50 *Annuity* 4. and 5.

A man grants a Rent to husband and wife of four pounds, and if she survive that she shall have forty shillings, yet it was adjudged; if she do survive she shall have also 4. pounds, because there is no Negative word, that she shall have forty shillings and no more, and that the remnant shall *case*, 8 *E*:3.13: *Assise* 143.



15 H.7.14. Three Coparceners make Partition, one Grants a Rent to the other two for equality of partition, this Rent is in the nature of Coparcenary, and if one dye the Rent shall not survive, vi: 2 H.7.5, C.5. part 8. acc.

Where a Rent is assigned to two Parceners, by the third Coparcener for equality of Partition, &c. so much to one, and so much to the other, yet it is but one Rent, and one Writ lieth for the two against the third Parcener for the whole Rent, 29 Aff: 23. Partition 12.

Vi: 29 Aff: Joynder in Action 18. ac. 38 E: 3. 26. C: 5. part 8. If two Coparceners make a Feoffment, rendring Rent to them and their Heirs, their severall Heirs shall inherit, because their Right is severall, yet but one Rent.

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XXVII. Where by Grant of Land or other things, the Grantee shall have many things, advantages, and liberties which are implied in the Grant.

**N**Ote, the Law is *Quando quis aliquid concedit, etiam id Considerari videtur sine quo res ipsa esse non potest. t. E. 1. Grants 41.*

Vi: 13 H.8. 15  
14 H.8.2. Plo  
Com. 16. ac.

If a man grant to me to convey a Conduit Pipe through his Close, &c. if afterwards it be stopped, I may well dig the land to amend it, although it be not expressed in the Grant, for otherwise he cannot have advantage of the Grant, 9 E: 4. 35. Action upon the case 18.

So by grant of Trees, &c. it is implied in the Grant that I shall come upon the land with Carts, &c. to carry them away, but such special matter shall not be implied but for necessity, and that to be done without great damage to the other. As a man sells me all the Fish in his Pond, I cannot dig the land to take them, because there is another means to take them, so no necessity. Also if he grant me Trees which cannot be cut without falling upon his house, such cutting is not lawfull. So if he grant me liberty to dig in all his lands, I cannot dig under his Hall, so it fall, &c. per Persey; & Knivet said the contrary in the last cases, but of the Fish it was adjudged as Persey said, M: 2. R: 2 Bar 237.

If a man be seised of a Mannor with an Advowson appendant, and grants over an acre & *advocationem Ecclesie*, or *una cum advocatione Ecclesie*, the Advowson passeth as appendant to the acre, 13 H.4. Grants 88. So of a Grant of a Rent parcell of a Mannor to which, &c. 5 E: 3. 30.

Grantee of Common, *ubique averia* of the Grantor jectum shall have Common, where the beasts of the Grantor were put for Common after the Grant, although that now he hath no beasts, 9 H: 6 Common 11. E: 3. Common 10. That such a Grant shall be taken as it hath used to be put in execution.

A Rent-service shall not passe by Grant of all my Annuities in D. by  
*Prisat. 33 H:6.34.*

A man sells a Wood except forty of the best Oakes, at the election of  
 the Plaintiff to take and carry away within two years; Now if the Gran-  
 tor will not in convenient time, and upon request to him made elect them,  
 the Vendee may well appoint them, and cut them down for him; *M. 44.*  
*E:3.43.44 E:3.28. acc.*

He who grants to me to be acquitted against R. and his Heirs of Ser-  
 vices, shall acquit me against the wife of R. Tenant in Dower of the  
 Services; *1 E:1. Mesne 55.*

XXVIII. Where a Grant shall be sufficient to charge Land, &c.  
 - and by what words, and where to charge his Inheritance,  
 or the person, or the Inheritance of another.

NOTE, That he who is not actually seised in possession or reversion,  
 can never charge the land: And therefore he who acknowledgeth  
 a Fine, and retakes it by a render, cannot by that render charge the  
 land; *7 E:3.14. Fines 83.2 E:3.8.*

Also the Conusee cannot reserve a rent upon the render of the  
 land; *9 E:3.6.* which is not Law; But the Conusee by Fine may well  
 grant a rent to the Conusor by the same, &c. for the Fine doth suppose  
 him seised before, *4 E:3.41. 19 E:4.2. and 19. vi. 19 E:4.2. and 4. the*  
*Prior of Morton. and Prior of Bingham's Case.*

Also the Feoffee by Indenture where the Feoffor reserves rent, may  
 grant by the same Deed, that the Grantor shall distrain, yet the Feoffee  
 is not seised at the time; *7 E:3.19.*

But if a man grant a rent out of the Mannor of D. whereof he hath  
 nothing at the time, this is void; *14 E:4.31. 10 E:3.49.* although he pur-  
 chase the Mannor afterwards, otherwise if such a charge be by Fine, *Per-*  
*son 18. vi. Fitz: s. Estoppel 107. acc.* If the beasts of the Grantor come up-  
 on the land, the Grantee may distrain them, by *Horton.*

Schard saith, That *apud, in, and de,* are sufficient words to charge a  
 freehold; *29 Af:23. Partition 12.*

And so saith *Hussey*, *19 E:4.8.* But he saith, That (*pro*) is no word to  
 charge land, and therewith agrees *Schard* in the Case before: As if I  
 grant B. twenty shillings of rent *pro* such land, it is no Rent charged.

For the word (*Apud*) see *41 E:3.15.*

For the word (*in*) *15 E:3. Charge 9. 7 E:3.9.*

For the word (*de*) *22 Af:66. De molendino.*

*Periciend. de me & hereditibus meis, that is of me, &c. in Molendino,*

these words, the Mill is charged; *46 E:3.18. de Manerio. See more of*

and (*de*) *14 E:3.55.*

*Vi. 19 E:4.2.*  
*& 4. the Prior*  
*of Morton and*  
*Prior of Bing-*  
*hams case.*

There



See C. 7. part in  
Butts case ac.

The Land shall be charged by a Grant to distrain, 9 H: 6. 9. 26. A/ 31.  
by Skipwith.

A man grants a Rent issuing out of such an Ox-gang of land percipi-  
end by the Tenant, with clause of Distresse elsewhere, yet the Ox-gang  
is charged, 2 E: 3. 21. 5. E. 3. 66. A/ 169.

*Obliga terras in B. ad distributionem pro. &c.* is a good charge, 4 E:  
41. Avowry 165.

So *Concessi teneri I. S. in. &c.* 29 E: 3. A/ 366.

A Feoffment made, untill the Feoffee levieth so much money, good  
and he shall retain the land for the charges.

A man grants the Services of B: his Tenant, with Distresse elsewhere,  
yet after Seisin the Tenancy is charged. And so shall the Assise be  
brought, 2 E: 2. A/ 160.

Vi. 19 E. 4. 4.  
Brian.

Also a Grant to charge land, &c. ought to refer to certain land, place,  
and thing, &c. As if a man grant me Common, and doth not say in what  
place, &c. it is void, 9 H: 6. 39 But a grant of Common *ubicunque averia,*  
*jerint*, is good, 9 H: 6. 9. and 36. But he who claims such Common ought  
to alledge in fact, that the Cattell of the Grantor were depastured upon  
the land, whereof, &c. at the time of the Grant, or before, or after; and  
therefore because he did not do so, a Repleader was awarded after Ver-  
dict, 9 H: 6. 36. Repleader 8.

Grantee of certain land, &c. *cum communia in Brueria & Maris, &c.*  
brought an Assise as of Common in grosse, and took nothing, by reason  
of the noncertainty, 15 E: 3. Assise 111. 15 A/ 5.

A man grants Common *infra metas & bondas* in such a Town: And by  
the opinion of H. 1, none of his severall lands shall be charged by such  
generall grant, if he hath other lands used at Common, 15 E: 3. Common  
12. 14. A/ 22.

A Grant of a Rent shall be good to charge the person where the Pre-  
misses of the Deed is a perfect Grant, and the *percipiend.* is to charge the  
land, or another thing which the Grantor cannot charge: As if a man  
grant to me such a rent, *percipiend.* of such a Mannor, Land, or Ten-  
ement, &c. where in truth he hath no such, &c. his person shall be charged:  
So if he recite that I. S. his Tenant doth pay him twenty shillings *per an-*  
*num* rent, and he grants to me ten shillings *percipiend.* of I. S. where in  
truth he hath no such Rent, his person shall be charged; and if he had  
such a Rent, it shall be a Rent, seek with the Attornment of I. S. But if he  
grant to me ten shillings of the said twenty shillings, where he hath no  
such, this is void: see 9 H: 6. 13. and 53. Annuity 45.

Partition being made between Parceners, where the one is married  
and her husband for equality of partition doth grant a rent to the other,  
this is good, and shall bind the person and Inheritance of the wife,  
partition being equal, 29 A/ 123. partition 12.

If a man seised of a Mannor grant a Rent charge out of it,  
vise, that the Grantee shall not charge the Mannor, the same is good.

but he may charge the Person, but if the *Proviso* be that he shall not charge such a parcell of the Mannor, it is a void *Proviso*.

17 *Aff. 10.* If a Rent be granted out of a Mannour *percipiend.* in 20 acres of it, this limitation doth not discharge the Mannour: so if the Grant were out of 20 acres, *Proviso* that he shall not distrain in 10 acres, if the *Proviso* be, that he shall not charge the Mannor, nor any thing but the twenty acres onely of the Demeans, the same is void; for where the Mannour is discharged, the demeans also are discharged, *vide Plow: regat. 229 acc.*

If the Tenant grant unto his Lord to pay him twenty pounds for rent when it shall be due, &c. this is good to charge the Tenancy, 3 *E: 317.*

**XXIX.** Where a Grant of a Rent to him who is Tenant of the Land, is good; and where he shall take it by way of Grant, and where he may grant the same Rent over.

A Woman seised of Land charged with a certain Rent, took husband, and had issue two sonnes, the Husband purchased the Rent in Fee, and granted it to the younger sonne in Tail, and the opinion of *Chantrell* and *Herle* (as *Fitzh.* abridgeth the Case) was, that the Grant was not good, because he was entitled to the Freehold of the Land at the time of purchase, and he himself was never actually seised of the Rent, and said he had not a Seisin of which the wife should be endowed, but had such a Seisin whereof a Formedon in the Reverter would lye for the Donor, if the Case were such, and if he had purchased the same Rent before the marriage, the Grant had been good, because it was once executed to him by an actual Seisin by *Chantrell*, 5 *E: 316. Formedon 42.*

If the Lord grant his Seignorie to the Tenant, and a stranger, yet it shall enure by way of extinguishment for one moiety, by *Perkins 18.* and therewith agrees *Littleton, 34 H. 6. 41.* and *Yelverton* here saith, that all is extinct.

Lord and two Joint-tenants are, the Lord grants his Seignorie to one of them, it shall enure by way of Grant for the whole, by *Perkins,*

So a Grant of a Rent-charge, where he was once seised of it, 5 *E: 317.*

The Grantee of a Rent-Charge may well grant it over before actually seised, 36 *Aff. 3.*

An Assise of a Rent against the Feoffee of T. who granted it, he did not sue the grant of the Father of the Plaintiff who was grantee for life, the said Rent to his Feoffor who granted it, and the Assise awarded, because he was Tenant at the time, so such a Grant was not good by the opinion



opinion there, 3 E. 3. 12 Assise 171. 3 Ass. 7 Ass. 184. Littleton contr. Confirmation fol. 37.

**XXX.** Where the Grant of a Rent shall be charged by Confirmation after, or Release, and where the Confirmation shall make a new grant.

**A** Man makes a Lease for life rendring Rent, and grants over the same to take a Tenant for life, and dieth, the Tenant dieth, the heir enters and confirms the Grant of his Father, with clause of Distresse, this is good. 14 E. 3. Ass. 109. 14 Ass. 14. 26 Ass. 38. Assise 241.

A man reciting a Grant of his Father of such a Rent to B. for life, he confirms it, and further if the said Rent be behind he grants to B. by the same Deed that he may distrain &c. this is good, and B. shall have an Assise of the Rent upon it, without shewing the Deed of the Father, 18 E. 3. Monstrans de faits 170.

A woman seised of a Rent-service grants it over, and dieth before returnement, the Tenants deliver a pawn unto the Grantee by way of returnement, the heir doth release to the Grantee all his Right, and upon that matter, and Seisin and disseisin found, the Grantee did recover in an Assise against him who released &c. 16 E. 3. Ass. 74. If he was but Perpetual at the time, the Release is worth nothing by Littleton, 15 E. 4. 8.

A man granted a Rent to D. for term of life out of certain Land, the remainder to R. for life, and afterwards released all his Right in the said Rent to R. &c. *Et si contigerit dictum redditum &c. bene libere Praesentibus R. Heredibus assignatis suis distringere in terris predictis.* &c. it was adjudged that this is a good Fee by the last clause to distrein to him and his Heirs, although it be by another Deed, and although there was no Fee of the rent before this Release &c. 8 H. 4. 18. Release 19.

Note, Littleton holdeth the contrary of such Confirmation where the Rent was not before Confirmation, and said, there was no difference between Release and Confirmation, as to that intent.

**XXXI.** Where by grant of one Executor all passeth which is due to him and in his Co-Executors, and where one executor may make a grant to the husband of his Co-Executor.

**T** And M. Executors of the Conussee of a Statute Merchant sued Execution &c. and T. granted his estate to N. husband of M. Co-Executrix, and died, the Husband granted all his estate to H. afterwards the husband and the wife of their estate made an Indenture

*B.* and delivered him the Statute, but not Seisin &c all this matter found, and *B.* entred upon *H.* claiming such estate, and that others Tenants of the Freehold not named &c. and it was adjudged that *H.* the Plaintiff shall recover; for when *B.* doth enter without Title he shall be said Tenant by Disseisin against the disseisee &c. 42 E. 3. 9. *Affise* 130. 1

XXXII. Where the Grant of a Rent, the Remainder to another in Fee out of Land &c. is good, where a Grant to two the Remainder to one of them.

A Man grants a Rent out of Land, the remainder over &c. and good, and afterwards releaseth in Fee, all is good, 8 H. 4. 18. *Release* 19.

It is said that a Remainder may be well granted over of a Rent, which was not before, because all as one Grant, but a Reversion of such a new cannot be granted over, because he hath not such reversion, 15 E. 4. ac. A Rent was granted out of Land to two, and to the Heirs of one of them, and good, *Quare* if he which hath the Fee may grant it over living the other, 3 E. 3. 12: *Affise* 171: the same Case, 3 *Aff.* 7: *Aff.* 184:

A Remainder to the Donee in Tail shall not vest untill the Tail be ended, and therefore the sister of the half blood shall have it, and not the child of the speciall issue, who was seised, 37 *Aff.* 4: 7 H. 4: 23:

See 11 E. 2: *Fines* 123: That a Remainder may be well of a Rent which is not, but the same shall not commence by Fine:

Of the Remainder to the right heirs of a stranger, and where the younger son shall have the Remainder as right heir, before the issue of the elder son, who dieth before it falleth, See 7 H. 4: 7: *Avowrie* 49.

A man grants to another to be measurer of his Land, and by the same deed grants the same Office to another to occupie after the death of the first Grantee, this is good, and yet there was no such Office nor grant before, 30 *Aff.* 4. *Grants* 41.

XXXIII. Where a Grant shall be determined by the act of the Grantor, or at his pleasure, although it be estate of Freehold, and where at the pleasure of the Grantee, although it was of an estate of inheritance.

A Man granted Land to *T.* for life *dummodo solvat* 12 Marks per annum to the Lessor, and bringeth an *Affise* of the Rent, yet this Freehold is determined at the will of the Lessee, *Affise* 172.

One of 2 markes of Rent granted untill the grantor pay him 10 markes *cest*, is Freehold conditionall, but if the grant be untill the grantee hath levied 10 markes this is but a lease for five years, 33 E. 3. *Affise* 327. and 33. *Aff.* 15.



15. *verdict* 42. But see there, that such condition found by Verdict though it was for an Infant, where the Deed was an absolute Grant for life, was holden of no effect, but the Assise remained to inquire if it was a deed of it.

A man grants a Rent to his Son out of such Land, and dieth, the Land descends to the Son, who brought Debt against the Executors of his Father, and well, for it was at his Election to have it a Rent or annuity, 45 *F.3. Executors* 71.

The Disseisee accepted the Land upon an agreement in the Country, on condition that the disseisor be bound to him in a Recognisance, and being pendant the Assise did abate it, if not that the disseisor might come for the Condition broken, and had re entred in fact, 10 *E.3.50. Assise* 163.

A Feoffment made to the wife, the Husband being beyond Sea, was utterly defeated, and devested by the disagreement of the Husband at his return and refusal to take the Profits, *Perkins* 9. 15 *E.4.1. by Littleton*

XXXIV. *Where a Grant of the Lessor during the Term of Years is good, &c. Where not.*

**I**N Wast by an Abbot for cutting down of Trees against Tenant for life of the Lease of *M.* his Predecessor, the Defendant said, that the said Predecessor gave the said Trees to a stranger, for which the Defendant cut them down, and delivered them to the Grantee, and that was holden a no Plea by the Court, for the Grant is nothing worth, if the Predecessor had not cut them down, or commanded the Tenant to cut them down, also if he plead the commandment, he ought to alledge the same executed in the life of the Grantor, otherwise it will not serve, 21 *H.6.46. Wast* 53.

If the Lessor command his Lessee for life to dig gravell &c. this is void, and he shall have Wast for the digging, notwithstanding the Commandment, for he himself had nothing to do in the Land, during the life of the Lessor; but *Bryan* said, that such Command to fell trees, shall be good, for the Trees do belong unto him, 2 *H.7.14. 11 H.4.31.*

XXXV. *Where the Grant of the husband and wife during the Coverture shall bind the wife after by the Deed. and where they do not grant by Fine, and where it is void against the wife.*

**T**HE Guardian assigns Dower to a woman now Covert, by Indenture, and the husband and wife grant to him a Rent out of the same land. And it was adjudged, it shall not bind the wife, because it is not special

joined in the Deed, that the land is more worth than her Dower, and that  
rent is granted for equality, 17 E:3.9. *Avowry* 95.

A man acknowledgeth a Statute unto husband and wife, who render  
a rent, &c. and it was not recovered, because the wife shall not be  
bound in such Fine, 5 E:3.24. *Fines* 45.

The husband and wife having a use of an Advowson in the right of the  
wife, may well grant the same, but it shall not bind the wife after the  
death of the Husband, 6 H:7.3. *Grants* 39

Note, where husband and wife, Lessees by Indenture, make a Cove-  
nant touching their Estate which doth not bind the person, nor the Inhe-  
ritance of the wife, but onely the land leased, &c. the same shall bind the  
wife agreeing to the Lease after the death of the husband, as a Covenant  
to pay rent for the land, and to double the rent for default of payment,  
&c. But a Covenant that they pay twenty pounds upon a pain, &c. or  
that the Lessor shall have such assurances for the rent as he will devise, or  
that he shall distrain in the land of the wife, and the like, shall not bind  
the wife after the death of the husband, 45 E:3.31.

A man covenants with the husband and wife that he will levy a fine to  
them, and they covenant by the same Deed to render back the land to  
him, &c. the same shall not bind the wife, 15 E:4.29. *vi.* 44 E:3.33.

Husband and wife Lords in the right of the wife, upon composition  
with the Tenant, change the Services for Rent, or other Services, this is  
good, because the wife hath *Quid pro quo*, 10 E:3.23.

## XXXVI. Where a Grant of Annuity made by two shall be one Grant.

Annuity against R: the Arrearages of an Annuity by him granted  
unto the Defendant for life, and shewed the Deed, which was, That  
R. and W. bind themselves untill promoted unto a Benefice: And the  
Deed was, *Obligamus nos & utrumque nostrum*, and doth not say, *in soli-*  
*um*, yet all was good against R. alone, and at last issue was taken upon the  
sufficiency of the Benefice.

## XXXVII. Where a Grant of the Lord shall change the Services in him and the Tenant, and part shall be new Services, and where he may grant to make another thing for it.

The Lord grants unto his Tenant for his ease, he shall do his Suit  
which is due at his Court of C: at the Court of B: this is a good ex-  
emption for the Tenant, but by that the Suit at the Court of C. is not de-  
termined, 3 E:2. *Action sur Statute* 24. So Berry saith there, if upon a  
grantment I take two shillings per annum, for my Suit there, and be sei-  
fed



sed of the same rent for forty years, yet the Suit is not gone, but I have it again when I please.

A Seigniorie descends to two Parceners, which take husbands, one has issue, and dieth, and upon composition between her Husband, the Son, the other Parcener and her Husband, and the Tenant, the Services are changed of part for other Services, and in part for rent, and several assigned to the Tenant by the Curtesie his Issue, and to the other Parcener, and now a Cousin and Heir to the Issue of one Parcener, and also the other Parcener make entire Avowry for the whole, and good: but after the Plaintiff did demur, because they did not alledge Seisin of new Services, which were in lieu of the others, and did not begin with the Tenure, for which the Heir ought to alledge Seisin of them, by *Parceners* 10 E:3. *Avowry* 238.

Avowry upon a Prior for a hundred shillings for relief, because the Predecessor held of the Ancestor of the Avowant by Knight-Service and upon debate he upon the assent of the Covent granted to hold by the same Services, and further to pay a hundred shillings for relief at every avoidance, and levied Seisin &c. and good, yet there was no clause of Distress in the specialty, for it shall be intended Service, &c. 20 E:3. *Avowry* 124.

The Lord confirms the Estate of his Tenant to hold by a pound of Pepper for all Services, *Pro servitio & homagio suo*, and grants over the Seigniorie, the Grantee cannot avow for fealty: It was such that for Homage lieth in privacy. Also *Wilby* saith, That he shall not avow for the lesser Services reserved, 26 E:3 16. *Avowry* 246.

See a good case, 14 H: 4. 18. That this is good, although the Tenant had nothing at the time.



# LEET.

## 1. What things may be enquired of in the Leet.

**I**N a Leet, a man shall enquire of Paines, and of those who are put in Decineys, and that cannot be in the Sheriffs turn, 18 H:6. 13. *Leet and Hundred*. 1.

The not using of Faires or Markets, according to the Grants of the King, &c. shall be enquired of before Justices in Eyre, or in the Sheriffs Turn, 22 H:6 14. *Action upon the case* 11.

All Felonies and petit Treasons which were at the Common Law, are inquirable in the Leet, or in the Sheriffs Turn, but of the death of a man, 7 H. 6. 13. by *Cotte/more*, *Leet* 10 22 E:4.22.41. *Aff*: 30. Where the Lord and Steward of a Leet were amerced for inquirage of the death of a man.

Felony given by Statute which was not at the Common Law, is not inquirable in a Leet, but where the thing done was at the Common Law, and greater punishment is given by Statute, such thing shall be enquired of in the Leet, as it was at the Common Law: As the killing of his Master shall be enquired of as Felony, and Rape, as Trespasse, for the King himself cannot use a Leet otherwise then it hath been used, nor by the same reason grant to another to use it otherwise, 8 H:7.4 *Leet* 3.

A man was amerced in a Leet for not cleansing his Ditch; and it was also awarded that he should be distrained to amend it after, and upon default the Lord should avow for that pain so set. *P*:29 E.3.36.

He who hath a Ferry is bound to uphold it, serve it, and repair it, and this is enquirable in the Sheriffs Turn, or before Justices in Eyre, by *Newton*, 22 H:6.14.

The property of a Chattell presented in the Leet or Hundred, by prescription, 39 E:3.35.

See the Statute *de visu Franciplegio* An. 18 E.2. *Rassall* *Leet* 1. Of Apprell according to the Statute, 24 H:8. cap:13. and 1, and 2 *Phil. & Ma.* cap:1. Of Apprentices, 7 H:4. cap:17. Artificers, An. 2 E.6. cap:6. Of Shoemakers, Tanners, &c. An: 2 E.6. cap:9. Cross-bowes, An: 33 H:8. cap:6. Crowes, An: 24 H:8. cap:10. Fish, An: 1 *Eliz*:cap:8. High-waies, 2, and 3. *Phil*:and *Mar*:cap:6. Hunters, 14 H:8 cap:11. Masters 1.



II. *The Order of the Leet, and when it shall be holden, and who shall be sworn there, and of two manners of Leets.*

**A** Leet may be well holden, at any place within the Precinct of the view, &c. But a Court Baron shall be holden in a place certain, by *Brian*, 8 H:7.4. *Leet* 4.

Generall Leet which was by the Common Law, shall be holden twice every year, by *Portington*, 18 H:6.12. *Leet* 1. But *Brian* saith, That the Leet shall be holden but once in the year, by the Statute of *Magna Charta*, 8 H:7.4.

Suit at the Leet is for cause of Resiency, and that shall not be at two Leets, but well at the Leet and Torn of the Sheriff, for there many things are enquired of for default of the Leet, 18 H:6.13.

My Feoffee of parcell of my Mannor, yet shall do Suit at my Leet holden within the same Mannor, by *Stone*, 40 E:3.19.

Note, if a man hath a Leet which hath been holden at a day certain, if he will change the day, and hold it at another, this is void, and without warrant: Otherwise it is of a Court Baron, as it is said, 38 H:7.7. *Leet* 2.

Note, by the opinion of the whole Court, that every man shall be in some Leet, and ought to come thither by reason of Resiency, as well the Servant as the Master, &c. 2 H:4.16. *Leet* 3. 18 H:6.12.

*Newton* saith, If a man be riding where the Leet is holding, the Steward for want of Jurors may compell him to be one of the Jury there, 7 H:6.13. 3 H:7.4. But by *Thorp* in a Leet and Hundred, the Lord shall make the Freeholders to be sworn, notwithstanding the Statute of *Marlbridge*, cap:22. 39 E:3.35. *Leet* 6. but see 44 E:3. The Lord of a Leet shall cause the Suitors to be of the Jury, which shall not be in a Hundred, *quod nota*, 44 E:3.19.

In a Leet or Hundred, if a man will not be sworn, he shall be fined, and the Lord may imprison him untill he hath paid his Fine, and he shall be amerced and distrained for the Amercement, 31 H:6. *Leet* 11.

The Prior of *S.* who dwelt within the Leet of the Abbot of *Ramsay*, did prescribe to be warned to the Leet by fifteen daies, to sit there with the Steward, and to have the Fines and Amercements of his Servants and Tenants within the same Leet. Note there, that the Abbot did claim it by Prescription to hold a Leet once a year, at the time of *Easter* such a day, &c. *M.* 38 H:6.16. *Action upon the case* 15.

If I be seised of the appearance of one at my Leet, although that in right he is to be attendant at another Leet, this Seisin doth give me Title in a *Quo warranto*, *H.* 32. E:3. *Avowry* 112. and *H.* 10 E:3.8. *Avowry* 155. by *Stone* 4 E:3.31.

The

The Lord of a Mannor may well have a Leet within his Mannor: So he who hath not a Mannor may well have a Leet there, and shall enquire of Nuisances, &c. but shal not meddle with no Waste in the Mannor, 4 E: 3. 10.9 H: 6. 44.

The Feoffee of the Lord shall do Suit at the Leet, notwithstanding the Deed of Feoffment be to hold quit for every manner of Demand and View, for the Lord cannot discharge him from the Law, &c. 7 E: 2. *Avowry* 211. And see the contrary adjudged, 8 E: 2. *Avowry* 112. and that he shall be discharged of Suit at the Leet by such Feoffment of the Lord, *Pro omnibus servitiis, sectis, & demandis.*

### III. The Authority of the Steward, and of the Lord of the Leet, or of the Resiants.

**R**eplevin of Goods, the Defendant did avow as Lord of such a Mannor, where he had a Leet, &c. because that the Plaintiff had stolen them, and driven them through the Town, and Hue and Cry being raised upon him, he waived them, and fled to the Church: And it was holden no plea for the Plaintiff, to claim property, without answering to the waiving as before, 29 E: 3. 38. *Avowry* 253.

The Lord of a Leet may imprison him who will not be sworn, untill he pay a Fine, and amerce him, and distrain for the Amercements, *M.* 31 H: 6. *Leet* 11.

A Tythingman who will not present, may be amerced by the Steward by usage, &c. and the Suitors may be amerced by him, for not doing of their Suit, by *Newton*: But *Chauvntrell* said, The Amercement must be assessed by the Suitors, 10 H: 6. 7. *Ley* 5.

*C. 8. part 38. Gresters case, ac. 10 E: 3. 8. Avowry 155. C. 11. part 43. Godfrys case ac. 4 Eliz: Dyer 211. ac.*

Note, the Tenants in a Leet may make By-laws by assent amongst themselves, and the same shall bind them: As that he who puts his Cattell upon the Common before such a day shall forfeit, &c. Also the Lord of a Leet may prescribe to have a certain summe of money for every Fray and bloodshed, and to distrain for the same, and to sell the Distresse, *M.* 21 H: 7. 40. *Prescription* 67.

The Barly may distrain for a thing done in the Leet in the High way, 34 E: 1. *Avowry* 232.

### IV. How



IV. *How the Amercements forfeited shall be levied, and what shall be causes to amerce, &c.*

**O**ne 7: was amerced by the presentment of the chief Pledges, for that he had kept with him one *W:* above a year and a day, who was not put into the Decenery, this was holden a good cause, and the Amercement well levied upon the Beasts of others taken in the laud of 7. and in his Custody, *M:41 E:3.26 Avowry 65* See there he ought to remain continually within the View for a year and a day.

See that for an Amercement in a Leet, the Lord may distrain, *13 E:3. 12. b. C.8. part 34. Greisleys case. Vi. F N. B. 100. 47 E:3. 13.* He cannot distrain the beasts of a stranger as the Amercement in a Leet.

Not appearing at a Leet is a good cause to amerce a Resiant, and the Lord who distrains for the Amercement needs not shew for what he distraineth before the Tenant hath tendred him something for amends, although the Tenant doth not know the cause, *45 E:3. 9. Avowry 80. Vi. 11 H:4. 89. 12 H:7. 15.*

If a man be amerced for a thing done in a Town wherein he dwelleth, he may be distrained for it in any place within the Hundred, or Leet, *11 H:4. 88.*

Seisin had of Suit at my Leet is a sufficient cause to amerce such a Suitor afterwards, although of right he oweth Suit at another Leet, *32 E:3. Avowry 112.*

A Suitor at a Leet may be amerced for not presenting things presentable, being sworn with others, and a generall Avowry good, but he may say, that there was nothing to be presented, *10 E:3. 9. Avowry 155. 10 H:6. 7. Lib: C. Entries t. Det. 149 C:8. part, Greisleys case ac.*

Seisin of Leet is sufficient cause to avow for an Amercement there, although he hath no Title, nor Mannor there, *4 E:3. 10. 11 H:4. 88. 8 E:3. 11.*

A Resiant amerced for not cleansing of his Ditch, and a pain levied upon him that he cleanse it after, and a Distresse taken for not doing of it, *&c. 29 E:3. 36. 41 E:3. 26. ac.*

An Abbot was amerced at the Sheriff. *Turn*, for not repairing of a Cawsey, which he ought to repair, &c. The Abbot in Avowry for it said, that the Cawsey was in the Lordship of the Earl of *A.* and in his Mannor of *E:* where he hath a Leet, in which the defects of the said Cawsey have been presented, time out of mind &c. and not in the Turne of the Sheriffs before name &c. And upon the Demurrer, he recovered damages, *P. 29 E:3. 27. Avowry 247.*

Resiants and Tenants may be amerced in the Leet for refusing to swear *38 E:3. 18. Conusance 23.*

The Lord of a Leet shall not prescribe to amerce the Petit Jury, for their

their false Verdict, the same being found by the Grand Jury, for it is no good Custom, but they may be amerced for concealing of any thing which is presentable there, and this is by Custome, *M: 9 H: 6. 44. Custome 1.*

An Amercement in a Leet may be well levied by an Action of Debt, *22 R: 1. Ley 43. 10 H 6. 7.*

V. Where one Leet shall be within the Precinct of another Leet, and where one shall do Suit at two Leets.

*Forshaw saith,* That he hath known where a man hath had a great Leet within his Lordship and another had a Petit Leet within his Mannor, which is within the same Lordship, *Curia negavit*, because a man shall not be compelled to come to two Leets for his Resiency, *18 H: 6. 13.*

*Leet 1.*

Yet see *13 E: 3. Leet 7.* holden by *Ald. and Schard.* That he who is Resiant within the Precinct of my Leet, yet he shall do his Suit at another View, &c. And my Resiant may be compelled to do Suit at another Leet within my Lordship by Seisin had, *32 E: 3. Avowry 112.*

A man claimed a Leet by reason of a Mannor which was within the Precinct of another Lordship who had a Leet, and in truth that by which he claimed was but a house and land, and no Mannor, but by usage, &c. *4 E: 3. 10.*

VI. What differences are betwixt Leet, and the Sheriffs Turn, and what things shall be enquired of in the Sheriffs Turn, and what there for default of the Lord of the Leet.

See for this, *18 H 6. 13.*

The Scile of the Turn is *Vifus Francispledge, Domini Regis, &c.* *saith* *de. Forfescue* saith, That by the Statute of *Magna Charta, cap. 35.* They ought not to enquire of no Popular Action, *Ad turnum sent: post* *Palch*, but onely shall have View, *3 Theothinga sit integra*, but at the Turn of *S. Michael, &c. 31 H: 6. Leet 11.*

If the Lord of a Leet do not enquire of things inquireable, and punish them, the Sheriff in his Turn shall enquire of them, and shall punish them, and in his default the Kings Bailiff or Justice in Eyre: But the Lord shall have the Amercements upon enquiry had before the Sheriff, or before the Justice in his default, *M: 40 H: 4. 4. Leet 13. see 28 E: 3. 95.* the default shall not be alledged.

He who hath a Faire or a Market, is bound to uphold it, otherwise he shall



shall be grievously amerced, and this is enquirable before the Sheriff before Justices in Eyre, *M: 22 H: 6. 14. Action upon the case 11.* So Ferry there.

VII. *Whether a Leet may be parcell of a Mannor or Hundred appendant to a Chappell.*

**N**Ote, by *Davers, Townsend, and Brian*, that a Leet may be parcell of a Hundred: And *Brian* saith, That it may be parcell of a Mannor, as it hath been adjudged, *8 H: 7. 3. Leet 4.*

A Leet may be well claimed by reason of a house and land, but not appendant to a Chappell or Church, *10 E: 3. 5 4 E: 3. 10.*

A Leet claimed as appendant to a Mannor, was holden good, *13 E: Leet 7.* and therewith agrees *4 E: 3. 10.*

VIII. *How Presentments in Leets shall be traversable.*

**N**Ote, *Schard* saith, That if a thing be presented at the day in a Leet this is as Gospel, if it passe that day without being repeld: And therefore if a false Presentment be made, he shall have an Action of Imprisonment the same day against the Presentors, but if he stay until another day, it is otherwise: And he who is amerced there for Perjury or other Nufans in Avowry for the Amercement he shall traverse in no point. *Wilby*, If it be presented that he hath levied a Ditch over the high-way, if the Presentment be false, he shall have Trespasse against him who throwes it down by force of such Presentment: And so of my house abated by reason of such false Presentment, *Hill 21 E: 3. Bar 371.*

He who is amerced in a Leet, may traverse the Resiency, but he shall not say, that the place where, &c. is within another View, *4 E: 3. 12. 10. 3. 5. 41 E: 3. 26.* But if he hath been sworn in my Leet he shall not have the Traverse, *4 E: 3. 31. 10 E: 3. 9.*

IX. *What things shall be enquired of in a Hundred, and how Suit reall may be to the Hundred, and how Suit Service.*

**O**F Suit reall, at a Hundred, which is by reason of Resiency, there shall be no Acquittall. But if the Lord of a Hundred make a Feoffment hold to him by Suit, this is Suit-service, and he shall acquit him: such Suits reserved by Lord after the Hundred granted, shall not be for

and to the King by Forfeiture of the Hundred, by *wilby*. An Enquiry  
Hundred shall be of breach of Assise, and of other things for the  
of the Peace, &c. 4 E:3.42. *Mefne* 42.  
*Schard* saith, That a Hundred is a thing not enquirable, and cannot be  
in view, nor charged, &c. 30 *Ass*.5.

## I. *Justices of Peace and their Authority.*

N Indictment taken before a Justice of Peace, of money counterfeit,  
and the like, is not good by the generall Certificate, that is to say,  
*Curam T. &c. Justiciar. ad pacem*: But the Certificate ought to be  
*Nec non Justiciar. &c. ad diversas felonias, offens. transgr. & alia*  
*audienda & terminanda*. For the Commission of Peace it self  
will not be to enquire of such Felonies, 2 R.3.9. *Vi*.4. E.6. *Dyer* 69. Justi-  
of Peace may enquire of Murther; because it is Felony, *vi*.C.8. *part* 68.

*Duby* saith, That a Justice of Peace may make a Deputy to take sure-  
of Peace of a man, and by the same Precept to give him authority to  
him to the Goal, if he shall refuse to do it, *T*.9. E.4.30. *False Impri-*  
*ment* 4. See there that the Sheriff made such Deputy, and good.

Note, that Justices of Peace shall take no Appeal, of no Approver, nor  
other, &c. 2 E:4.19. *Justice of Peace* 5.

by the Statute of Forcible entry, the Justices of Peace have pow-  
enquire of that, and if it be found, to make Restitution to the party:  
was said, that one Justice only might take Inquisition in no case,  
not specially given by Statute. *Telverton* saith, That they may re-  
any Assembly with force be before them at their Sessions, without  
So if they be disturbed with force to come to their Sessions.  
was said, That at the Common Law they might enquire of every  
with force, but they cannot enquire of an Entry with force be-  
the Statute, 7 E.4.18. yet there it is said, that it need not specially be  
that the Inquisition of the force was taken at the request of the

Justice of Peace hath power to remove the force, where a man en-  
with force into lands, and also he may record that force, and may  
the party to Prison, by the Statute, 21 H:6.5.

the party shall not have Traverse to a matter recorded by one Ju-  
H:7.8.

if a Justice of Peace assemble people to arrest Riotous persons,  
he is informed, he shall not be punished for that assembling of  
them,



them, although not Riot be made, otherwise it is where he supposeth such a Riot, without information, and there is none, &c. And if one such Justice sitting in Judicial place, as in the Sessions, such one committing a Riot, he by word may command him to be arrested, and may record it, and the other shall traverse it: Otherwise it is upon such Arrest, if he do not sit in Judicial place, there he shall traverse, it if he made no such Riot, &c. And he shall not have trespass against the Justice, or may make Redress upon the Arrest, 14 H. 7. 8. Justice 9. See there, that he shall not have Traverse upon such Record made by two Justices; and their Record shall not serve, but where they themselves saw the Riot, &c.

And *Fynner* saith, That when a Justice of Peace arresteth any man for misdemeanour, &c. he may commit him to Prison without demanding if he will find Sureties, for the other is to tender the same, 14 H. 7. 9.

Note, that a Justice of Peace may Arrest a man to find surety of Peace at his discretion, and afterwards let him at liberty, without finding Sureties, and he shall not be punished for the Arrest, because he is a Judge of Record, 9 E. 4. 7. A Justice of Peace need not show his Patent, when he justifies by it, &c. 9 E. 4. 2.

Note, Justices of Peace have not power to assigne a Coroner to one who becomes an Approver, nor to enquire of Treason, 9 E. 4. 1. Justice 7.

Note, the Constables have power to Arrest a man, and to make him find surety for keeping the Peace, but upon no paine; and if he will not, they have power to imprison him until he find Sureties, 3 H. 6. 9.

Note, If a Labourer be committed to Prison by the Lord of the Town, or by Justices of Peace for not serving, they have power to command the Gaoler to set him at liberty, for they may commit him upon suggestion: But where he is committed to Prison by Writ, he shall not be discharged without a Writ *per Curiam*, 14 H. 6. 8. Labourers 1.

A Justice of Peace sent his Letter to the Sheriff, to arrest J. bidding that he was indicted before him of Murther, by which he arrested him, and carried him to the Judges, who went to deliver him by the said Letter, without other Indictment against the Prisoner, 3 E. 3. *Item* 360.



## I. Justices of Oyer and Terminer, and their Authority.

**U**PON presentment before Justices of *Oyer* and *Terminer*, of a man killed, which is not Felony; as if he fall upon the Fork of another, they cannot let the other to Mainprize; but the Sheriff may well do it, and he shall have a Pardon of Courte upon the Record removed into the Chancery, *Itin. North. 7 E. 3. Corone 361.*

The Chancellor shall make a Charter of Pardon of Courte to him who kills a man *se defendendo*, upon a Writ from the chief Justice, certifying the matter, he is bailable, *3 E. 3. Itin. North. Corone 361.*

Note, That before Justices of *Oyer* and *Terminer* in Trespasse, if the Defendant put himself upon the Inquest, he shall not have Essoin after the first day after the Mife joyned, and they are Justices *Quintant*, but otherwise is it in the Common Pleas, *T. 19 E. 3. Essoin 173.* See the Statute of *Marlebridge, cap. 13.*

They cannot enquire of the Ravishment of an Heir, for that is given by Statute, and shall be by Writ onely, but they may well enquire of it as Trespasse, *29 Aff. 35. Guards 20.*

but see, that they cannot alledge Error in that which they do in such matter, but ought to alledge it to the Jurisdiction before themselves, *29 E. 3. 48. Guard 160.*

A Justice of *Oyer* and *Terminer* is of Record, and therefore where such a Justice was indicted, for that he had entred an Indictment taken before him against one, as of Felony, where he was Indicted but of Trespasse, the said Presentment against him was holden as void by all the Justices, *27 Aff. 18.*

Where the Inquisition is to enquire, &c. the Justices cannot do any thing before Inquest taken, &c. *20 Aff. 5. by Schard.*

A man sued Trespasse before the Justices of *Oyer* and *Terminer*, and upon between the Action brought and the Judgment, A new Commission of *Oyer* and *Terminer* was granted through the whole County, yet it was holden cleerly, that the Judgment of the first Justices shall be good, and all other things by them done, before the sitting of the new Commissioners, and notice to them made; but the using of the new Commission shall relate to the date of it, but not to make void any thing which was done by the first Commissioners, *124 Aff. 8.*

Justices



Justices of *Oyer and Terminer* through the whole County, may call the Bailies of every Hundred *infra libertates & extra*, and make Inquests of every Hundred, and Grand Inquests of all, and may inquire of executions, false Imprisonments, &c. 42 Aff. 5.

A Commission to enquire of Nulances in the Water of *Lee*, and *hag* in *Middl.* was returned in the Kings Bench, T. 19 E. 3. Brief 279.

Upon a Presentment in *Oyer and Terminer*, removed into the Kings Bench, the party shall have his Suit from thence, by *Schand*, M. 35 E. 3. 12.

A *Recordare* which was before Justices of *Oyer and Terminer*, was removed into the Kings Bench for Error. And note, the Record ought to make mention before what Justices the Plea doth depend: And therefore it is sufficient if the entitling at the beginning, be *Placita coram H. &c.* 29 E. 3. 39. Brief 907.



## I. Justices of Nisi Prius and their Authority.

**N**OTE, That in Trespasse before Justices Itinerants, if a man be put in Inquest, he shall not have Essoine at the first day, after the joyned notwithstanding the Statute, for this is intended before Justices of the Common Pleas; but the Justices Itinerants of *Oyer and Terminer* may take an Inquest at the first day, although that the Defendant maketh default, T. 19 E. 2. Essoin 173.

It is also to be noted, that if a man be put in Inquest before Justices of the Common Pleas, and he be indicted for a felony, where he was indicted but of Trespasse, the indictment against him was holden as void by all the Justices.

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**MESNE.**

# MESNE.

*I. Where a Writ of Mesne shall be maintainable, because of Owelty, and what shall be said Owelty, and where Service shall acquit service, and more, and where not.*

**W**hen the Tenant holdeth of the Mesne by the like services, *Fitz. N.B.* as he holdeth over or more, this is a good Owelty, but not *e 135.b.* contra, 4 H.6.28. *Mesne 1. 15 H.6. Mesne 2.*

Also the Tenant holdeth of the Mesne by a penny, and the Mesne over by 12 d. this is a good Owelty for the penny, 4 E.3.35. *Mesne 2.* But see here, that a Writ of Mesne doth not lie upon a Covenant of acquitter, by *Markham*, nor in no case, if the acquitail do not commence with the Tenure, the opinion of *Bill contra*, and that he shall not be put to a writ of Covenant, and put the Case of *Wast &c.* 4 E.2.35. See *Schard*, 14 E.3. *Mesne 7.*

Service doth acquit service according to the rate which he holdeth of the Mesne, whether the Tenant holdeth more or lesse, 4 E.4.11 H.4.50. *Mesne 23. 39 E.3.19. Mesne 25. 5 E.3.11. & 50 30 E.2.24. Mesne 40.* Homage doth acquit Homage, although the other Services are not equal, and 13 E.3. *Mesne 7. 5 E.13. 49. Mesne 43. and 59. 19 E.2. Mesne 60.*

The Mesne shall acquit the Tenant of common Right of the services which the Tenant ought to do him, and over of Right to the Lord &c. 39 H.6.31.

*Fitz 18 H.3. Mesne 74.* adjudge that the Mesne ought to acquit the Tenant against all Lords Paramount, *vide 29 E.34. acc.*

If the Tenant holdeth in Frankalmoigne, or Frank-marriage, these services are causes of acquitail for all Services due to the Lord, 4 E.4.35. so of Homage *Ancestrell 19 E.2. Mesne 61.*



II. For what manner of Services a man shall have acquitail, and where for all services issuing out of Land, and where for all services to every Lord, and where for damages recovered.

**A** Man shall have acquitail of all services, because of equality, of services, which the Ter-tenant of necessity ought to do by reason of the Land, as is suit real, 4 E.3 42. See 9 E.3.25.

Also of Common Right, the Mesne shall not acquit the Tenant, but of Services, which he himself ought to do of Right. 39 H.6. 21. But there, if the Lord distrain the Tenant for services not due, yet he shall have a Writ of Mesne against the Mesne, if he will not joyn to him &c. and also that a Writ of Mesne doth not lie against a Deed of Acquitail against all people, if not that he is distrained by him who hath a Seignorie in the Land &c. The same Law of such Prescription, but he shall have Covenant &c. but such Prescription against all people is void, by Danby, to make a binding of acquitail by Prescription, and also by Frankalmoigne of one entire thing which is double, if not that he relie upon the one, and refer the one to the other, as to alledge the Tenure in Frankalmoigne, and that by reason of the defendant and his ancestors have used time out of mind &c. and prescription is no cause of acquitail, without a Tenure &c. 38 H.6. 39 and 30 Mesne 4. *Prisoit* saith, if Lord, two Mesnes and one Tenant be, the Tenant is distrained for the services of the first Mesne, he shall have Writ of Mesne paravaile, although he hath done the Services &c. which proves, that payment of the services is not acquitail for the Tenant, see 20 E.3 Mesne 79-30 E.3.19. Yet it is a good issue in a Writ of Mesne, that he was not distrained by his default, and the Plaintiff was forced to raise the issue, 39 E.3. notwithstanding the speciall matter alledged, as before, but that speciall matter found shall excuse him of damage, and he shall have a Writ of Mesne against his Mesne, who ought to pay to the Lord Paramount, which see 17 E.3.43 18 E.3.19. a good Case, where the Mesne shall recover damages against his Mesne.

A Writ of Mesne against C: who by Fine had granted to acquit the Plaintiff against R. and his heirs, and now he is distrained by the wife of R. as Tenant in Dower of the Services, and he recovered the acquitail by award of the Court for the Reversion of the services did remain to the heirs of R.P. 31 E.1. Mesne 55.

If the Lord distrain the Tenant and driveth his cattell into another County, and the Mesne prayes to bring the cattell from thence, so that he may deliver the cattell of the Tenant, and put in his own, who will not do so because he may have an action for the driving out of the County, yet he shall recover damages for that distresse, also against the Mesne, for it doth not appear, but that he was distrained in his default, and

Berry asked him, if he would have his Mefne forejudged, 31 E.1. *Mef-*

*33.* A Writ of Mefne for the Mefne, for the damages recovered by the Tenant against him, where the Lord Paramount distrained &c. P. 20 E.

*3. Mefne 14.*

The Mefne doth suppose that he held of the Defendant by Fealty and Rent, and that he was seised of the services, the Defendant saith, that the Rent was a Rent Seck, and a good plea, although he was also seised of the Fealty &c. P. 20 E. 3. *Mefne 13 E.1. Mefne 62. contr.*

A Writ of Mefne doth not lie, but where he is distrained for such things which lie in Tenure, 4 E. 3. *Mefne 42. 2 E. 2. Extinguishment 6.* as of Rent-Charge, Rent-seck, Suit-Real, and of other things which the Mefne cannot do, nor compell the Lord to take of him, 5 E. 3. *Mefne 44 E. 3. accompt 44. 17 E. 2. Mefne 58.*

Homage ancestrell draws aquitaile for all services, 19 E. 2. *Mefne 61. 10 E. 2. Mefne 59.*

A man grants Land by Fine to hold &c. and warrants him for the services, afterwards the Lord Paramount distrains for relief due after the death of the Father of the Conusor, the Conusee brought *fine facto* to be acquitted &c. but because the Relief was due before the Fine, which was a consord for things before, the Conusor went quit, 15 H. 3. *Mefne 76.*

Note, it was adjudged that the next Mefne shall acquit the Tenant against all Lords Paramount, 18 H. 6. *Mefne 78. & 29 E. 3. Mefne 79.* where he brought two severall Writs being distrained by two severall Lords Paramount, and good.

Where the Tenant ought to do all services for the Mefne, yet if he be distrained for a corporall service of the Mefne &c. which he cannot do, the Mefne himself, he shall have a Writ of Mefne, 49 E. 3. *Accompt 44.*

A writ of Mefne doth not lie for the Tenant in Avowrie, if the same be made upon a stranger, and not upon his Mefne, or upon the Lord Paramount, &c. 34 H. 6. *Avowry 25. 10 H. 6. 27.*

Note, a Writ of Mefne lieth, if he for whose distresse the Tenant demandeth Aquitaile, hath not a Seignorie in the Land, 9 E. 4. *hors de son* 15. 4 E. 3. *Mefne 41. 27 E. 3. Mefne 15. 44 E. 3. 2.*

Note, that the Mefne who ought to acquit the Tenant, shall acquit him of all charges also, which are by reason of the Tenure, as of aid for marrying the daughter &c. 5 E. 3. 11.

R r r r

III. Where



III. Where Frankalmoigne is cause of aquitaile, and where  
 nancy in Frankalmoigne is cause of aquitaile, and where  
 version. &c.

**I**N Mesne, a Count, that he is distrained for the Services of the Tenure, and that he held in Frankalmoigne, and that he and his ancestors had acquitted him and his predecessors time out of mind, against all people, and held single enough, for all is referred to *Frankalmoigne*, and the Prescription alledged, is but to prove the Tenure, and execution of the aquitaile, but by the reason of *Paston*, this binding is all upon the Prescription, and the alledging of the Frankalmoigne is void, because he hath not alledged the beginning of the Tenure, as the gift &c. also note there, that Prescription doth not draw aquitaile, if not against him who hath a Seignorie in the Land, and not against all people, but Frankalmoigne against all people &c. 39 H. 6. 30. *Mesne* 4.

Confirmation to hold in Frankalmoigne, is a good cause of acquittal of Secular service, not of divine service, 4 E. 3. *Mesne* 41. But that is meant where such Confirmation is by the Donor or his heirs, but see 3 E. 2. *Mesne* 36. where by the opinion it seems, if a man give parcell of a Mannour to hold in Frankalmoigne, and grants afterwards the whole Mannour to a stranger, who confirms the estate of the Prior &c. to hold in Frankalmoigne &c. that he shall acquit him by *Harvie* Justice, although he do not alledge Attournement in fact &c. and 5 E. 2. *Mesne* 64. The Tenant did enfeof an Abbot, and the Lord reciting that Feoffment of the Land is in Fee, did confirm the estate of the Abbot, to hold in Frankalmoigne, and bound him and his heirs to aquitaile, and good &c.

Tenant in Tail may well bind the Donor to aquitaile by reason of the Reversion, but if he do not shew a deed, the other may well disclaim, 8 E. 3. 26. *Mesne* 19.

But where the aquitaile is dereigned by deed, by Owelty, Prescription, or Frankalmoigne, or Frank-marriage, or Homage Ancestrell, the Defendant shall not disclaim, 4 E. 3. *Mesne* 41. vide 10 E. 3. 25.

IV. Where Prescription is cause of aquitaile.

**P**rescription with Tenure, is a good cause of aquitaile, but not against all people, also if the Plaintiff claim the aquitaile by Frankalmoigne, and further by a generall Prescription of it &c. the advantage of the Frankalmoigne is waived, and it shall be adjudged upon the Prescription alone,

alone, but if he tax the Prescription in the usage of the acquitaile, by reason of the Frankalmoigne, now all is referred to that.

That Prescription is no cause of acquitail without Tenure, See 16 E.

3. Mefne 30 17 E. 3 Mefne 32.

In a Writ of Mefne, the Plaintiff counted, that he held of the Defendant, and that he and his ancestors have acquitted him and his ancestors time out of mind &c. the Defendant said, that the Plaintiff hath an elder brother, who hath issue G. who is alive, and demanded Judgement &c. and it seemeth a good plea, although he hath accepted Homage of the Plaintiff, because he doth not bind him by such matter, but by a Prescription, which he cannot maintain &c. Tr. 11 E. 3. Mefne 36.

Wilby saith, that by my deed of acquitter &c. I shall not acquit him but of the services, but by Prescription in the same thing a man shall be bound to acquit him of that which doth not lie properly in acquitail, as of suit to the Hundred, 4 E. 3. 42. Mefne 42, see Herle in the end, and by his reason the Writ doth not lie of such suit by no way &c.

Herle saith, that a man shall not have acquitaile against an Abbot by Prescription, that his Predecessors &c. for their Act shall not bind the Church, 4 E. 3. Mefne 42:

It is a good binding by Prescription, that the Defendant and his Ancestors have acquitted him and his ancestors, and all those whose estate he hath time out of mind &c. 27 E. 3. Mefne 15.

A man cannot prescribe in a *Qua* estate of the part of the Defendant in a Writ of Mefne, 4 E. 3. 42. by Herle.

In a Writ of Mefne, the Plaintiff counted that the Defendant and his ancestors had acquitted the Plaintiff and his ancestors, and those whose estate &c. time out of mind &c. they were at traverse upon the Prescription, and it was found that the Land was to one A. &c. and that the defendant and his ancestors had acquitted him, and his ancestors untill the time of the Feoffment &c. and no more, and upon that the Plaintiff did recover the acquitaile, 15 E. 3. Judgement 133.

A man may well maintain an acquitaile by Prescription, although in truth he cannot prove the acquitaile in a Writ of Mefne, for it is sufficient, if the Mefne alwayes did, the services do &c. yet the Plaintiff need not to alledge that specially, but the Defendant shall plead it in destruction of the acquitaile, 5 E. 3. 49. Mefne 43.

In *Per que servitium*, the Tenant shall not have acquitaile by Prescription, 4 E. 3. 28:

Acquitaile by Prescription is extinct by a generall attornment unto the Grantee of the Seignorie, 5 E. 3. 11. 6 E. 3. 19.



V. *Where a Grant by Deed shall be cause of acquitaile, or to have a Writ of Mesne, where Conuſance in a Court of Record, where it ſhall bind him and his heirs, and where him onely.*

**I**F before the Statute he who holdeth by 12 d. make a Feoffment to hold of him by a penny, and by the ſame Deed bind him &c. to acquitaile, now this Owelty for the penny, and the Tenant ſhall have acquitaile for the 11 d. by the Deed by *Billing*, and that although the writ of acquitaile were after the Tenure made. But *Markham* ſaid, that he ſhall be put to his Covenant for ſuch acquitaile, if it do not begin with the Tenure, 4 E. 4. 25. *Mefne* 5.

A Woman bound her and her heirs to acquitaile &c. and took husband, had iſſue, the Tenant did releaſe the acquitaile to the Husband and his heirs, the Husband and wife died, the Tenant brought a Writ of *Mefne* againſt the iſſue, as heir to the wife, and recovered notwithstanding the Releaſe 38 E. 3. 12. *Mefne* 24.

He who acknowledgeth by Fine to acquit me againſt R. and his heirs onely, ſhall acquit me alſo againſt the wife of R. Tenant in Dower of the Services, 31 E. 1. *Mefne* 55.

Note, upon an accord by Fine to acquit, the Tenant may have a Writ of *Mefne* or a *Scire facias*, but in the *Scire facias* he ſhall not forejudge the *Mefne*, nor ſhall he have expreſſe judgement to recover the acquitaile, but the *Mefne* ſhall be diſtrained to acquit him; and if he come not, a *Diſtringas* infinite, 5 E. 3. *Mefne* 29.

Conuſance in a Court of Record of acquitaile ſhall bind the Conuſor and his Heirs for ever, without Affets, but not a Deed, unleſſe the heir be named in the Deed, and alſo hath Affets, 14 E. 3. *Mefne* 7. and *Schard* ſaith, there, that a Deed without a Tenure is not cause of acquitaile, by a Writ of *Mefne*, but if there be a Tenure, that ſhall acquit all Services, but ſee 15. *Aſſ.* 9. *Mefne* 44. where Error was aſſigned, for that the heir was awarded to acquitter by the Deed of the anceſtor, where he did offer to averre that he had nothing by deſcent, and without triall of it, the Judgement was affirmed, and the ſame Defendant ſaid, that he had nothing in the Seignorie, and the plaintiff would have eſtopped him, becauſe he had at another time brought a Writ of *Mefne* againſt his Father, who pleaded, not diſtrained in his default, by which the acquitaile was acknowledged, and he charged &c. and it was holden no Eſtoppell, but againſt the Father himſelf &c, otherwiſe it ſhould have been if there had been ſhewed

gave the speciall answer by the deed 28 E. 3. 4. *Mesne* 16.

A Writ of Mesne was brought upon the deed of the Ancestor, of a  
made unto him & *heredibus suis legitimis*, with clause of Warranty  
and Acquitale, and confessed by the deed, and it being alledged in the  
Court, that the Defendant is seised of the Services, so as the Tenure doth  
appear, he shall recover the acquitaile, but that he should not onely by  
the deed, without alledging Seisin of the services, or that he was ready  
28 E. 3. 49. *Mesne* 20.

The acknowledgement of the Acquitale in a Writ of mesne, shall  
bind the Heir for ever, but otherwise it is of Entry into the Warranty  
and Voucher, 18 E. 2. *Mesne* 54. *Voucher* 232.

A Writ of mesne will well lie against that coparcener alone to whose  
part the Services are allotted &c. 3 E. 2. *Mesne* 45. *Vide* 3 H.  
644.

The Lord granteth over the Services of an Abbot, who holdeth of  
us in Frankalmoigne, the Grantor confirms to the Abbot to hold of  
him in Frankalmoigne, with clause of Acquitale, and because there  
was no Tenure betwixt them, it was holden that a Writ of mesne did not  
lie upon the deed; for a Seignorie of Frankalmoigne cannot be given a-  
way from the donor, and his heirs, 3 E. 2. *Mesne* 46. See 4 E. 3. *Mesne* 41.  
5 E. 2. *Mesne* 64. It is holden that a Writ of mesne lieth upon such a deed,  
and so seems the opinion to be of 3 E. 2. before, and it was excepted unto  
by the defendant onely; for that he did not alledge specially the pur-  
chase of the Seignorie from the Donor, and Attournement of the Ser-  
vices.

A Woman grants Acquitale to her very Tenant by Fine, then she  
takes a Husband, and hath issue and dyeth, the Tenant brings a Writ  
of mesne against the issue, who pleads that he hath nothing by Descent,  
but that which his father held as tenant by the courtesie of England, upon  
which they were at issue. *Berry*, If he hath any Land by descent, then re-  
cover your Acquitale, but if the Heir have nothing by Descent, then stay  
until that time, 4 E. 2. *Mesne* 52.

A Seignorie was granted unto the Husband and wife, and unto the  
Heirs of the Husband by Fine, he brought a *Pen que servitia* against  
the Tenant, who pleaded an Acquitale against the Grantor, and saving  
that &c. by which the Husband did confesse the same for him and his  
Heirs, and it was entred and Enrolled, that the Heir should acquit  
the Tenant after the death of his Father, in the life time of  
the wife, which note, by *Fitzherbert*, the Services of mesne against  
him in the Remainder living, the Tenant for life of the mesnalty, which  
is a strange Case, but this is by the confession, and the Enrolment one-  
ly, 5 E. 3. *Mesne* 56.

Where he who confesseth the Acquitale, cometh in at the  
Grand Distresse, and saith that he was not distrained in his Default,  
and



and that is found against him, he shall be forejudged and render damages. 13 E. 3. *Mesne* 68.

After an acquitaille acknowledged upon a Fine, a writ of Mesne doth not lie to acquit him of any thing due before the Fine, as relief &c. 13 H. 3.

*Mesne* 76. A deed of acquitaille was adjudged void, because it was made in the time of warre &c. 18 H. 3. *Mesne* 77.

39 H. 6. 30. *Aston* saith, that prescription neither makes nor draws an acquitaille, where there is no Tenure, and there the party always in his Court, ought to set forth a Tenure.

See 8 E. 3. 58. where the heir was bound to acquitaille by the Deed of the ancestor, although he was not seised of the Services.

**V I.** Where a man shall have a Writ of Mesne, where mesne is behind, and where the Lord hath acquitted him, and where not.

**P** *Aston* saith, that notwithstanding that Relief be not due, yet if the Tenant be distrained, and Avowrie be made upon the Mesne, the writ lieth well enough, if the Mesne will not joyn, because the Tenant cannot abate the Avowrie, 10 H. 6. 27. vide 13 H. 6. *Mesne* 3.

*Thorp* saith, that if the Lord distraineth the Tenant for the Services of the Mesne which are not due, the Tenant shall have an action of Trespasse against him, and recover his damages, and thereunto agree, *Shard* and *Wilby*, *Quere* 17 E. 3. 15. also *Thorp* saith, that a Writ of Mesne doth not lie for the Tenant in that case, 31 E. 3. *Joinder* in aid 14. but *Seyn* held that he should have a Writ of mesne, for upon refusal to join with him in the Case, for then he is distrained in his default, though nothing be due.

Where there are two Mesnes, and the Lord distrains for the Services of the Mesne next to him, now the Tenant shall have a Writ against his Mesne, although that he hath paid the Services, for payment of services is no acquitail to the Tenant where he is distrained &c. by *Prison*, 39 H. 6. 30. *Mesne* 4. But in such Case he shall not recover damages against the Mesne, 17 E. 3. 44. Where *Stone* saith, it is sufficient to the Mesne that he hath done that which he ought to do, but *Green* said that a Writ of Mesne doth lie, because distrained by the Lord, be it for cause, or without cause, and 18 E. 3. 19. *Mesne* 15. he recovered.

If there be many Mesnes, and the Lord avow upon the Mesne next to him, the Tenant shall have a Writ of Mesne against his Mesne, and so each by the other untill &c. 34 H. 6. 46. *Avowry* 25. and so adjudged 17 E. 3. 44. That a Writ of Mesne lieth for the Mesne against the Mesne, 18 E. 3. 19.

But if the Lord avow upon a stranger, no remedy for the Tenant, for he shall not have a Writ of Mesne, 17 E. 3. 60 and 15. 3. 1 E. 3. 30. *founder in*  
14. 3. 4 H. 6. *Avowrie* 25. 4 E. 3. 55. he may joyn if his beasts be im-  
pounded for those of the Tenant, although the Avowrie be upon a  
stranger.

*VII. Where Seisin of Services is a cause of acquitail, and where  
tender of the services.*

Upon demand what he had to bind him, the Plaintiff said, that he held  
of the Defendant, and that he was seised of his Homage, and that  
he and his ancestors had acquitted him and his ancestors time out of mind,  
the defendant said, that the plaintiff had an elder brother living, and it  
seemed to be a good answer, because the binding is dereigned upon the  
Prescription, in which case Seisin of the Services is not materiall,  
but if he had alledged onely the Tenure and the Seisin of the Homage, the  
Defendant should be concluded, 11 E. 3. *Mesne* 36.

Note, that he who claimeth acquitaille for cause of owelty, ought to  
allege in fait, that he holdeth of the Defendant by such services, as if it  
be by homage, of which he demandeth acquitaille, and that the Defendant  
is seised of his Homage, or that he hath tendred his Homage, 30 E. 3.  
23. *Mesne* 40. 5 E. 3. 49. he needs no Seisin in such case.

But when the Acquitaille is demanded by the Deed of the Ancestor, al-  
though that he count that he held of him &c. he shall recover the acqui-  
taille upon the Deed acknowledged, notwithstanding the alledging of the  
Defendant, that the Plaintiff hath not done nor tendred the services, 14  
E. 3. 49. *Mesne* 20.

A Writ of Mesne for acquitaille of suit to the Hundred Court, it shall  
not be maintained upon a Deed confessed, nor by prescription, but if  
he could have alledged Seisin &c. the Mesne should be bound, as *Watson*  
conceives upon the Case, but see the book, that such suit doth not lie at  
all in acquitaille, because royall, and shall be done by the Tenant by rea-  
son of his Resiency, 4 E. 3. 42. *Mesne* 42.

Mesne brought against one Parcener, alledging the services to be alor-  
ted to her, and she seised of the services &c. this is a good cause of ac-  
quitaille, 3 E. 2. *Mesne* 45. 19 E. 2. *Mesne* 61. and there she shall not have  
aid of the others, 3 H. 6. 43.

Seisin of services is not traversable, where he layes the acquitaille in  
the Right as Prescription, or by Feoffment of the ancestor, and acquitaille  
at all times, after that Feoffment, 4 E. 2. *Mesne* 63.

In a Writ of Mesne, it was alledged for the binding, that he held of  
the Defendant by Homage, and he seised of the services challenged, be-  
cause that Homage is a cause of warranty, and the Plaintiff recovered,  
11 E. 1. *Mesne* 73.



An Infant shall not be bounden without Title of Right, as the Deed of the ancestor, prescription or confession &c. not for that he is seised of the same services, by which upon such binding by seisin &c. alledged the plea did remain, for that an infant shall not be forejudged within age, 7 E. 2. *Mesne* 66.

See 5 E. 3. 11: and 50 and 56: that Seisin of it self is cause of acquitaile of other services, and is traversable, but Seisin of services alledged, shall not estoppe the defendant to say that he doth not hold of him, and so to oust the acquitaile, 20 E. 3. *Mesne* 13.

When a man gives Land in Tail, *Tenendum &c.* and doing the services due unto the chief Lord, the Donee shall not have acquitaile of Rent and such which he may do, without alledging in fact, that he tendered them to the Lord, which he refused &c. 21 E. 3. 49.

### VIII. The form of the Count, or Declaration in a Writ of Mesne.

**T**HE Declaration in a Writ of Mesne shall be alwayes generall, and of one Form, whether it be brought by the Tenant in Demean or by the Mesne &c. 17 E. 3. 44. 18 E. 3. 19: E. 1: *Mesne* 72.

Tenant for life, the Remainder over in Fee, shall have a Writ of Mesne, and shall count as very Tenant; for this is the ancient form, 11 H. 6. *Mesne* 2. 17 E. 3. 39. he ought to alledge in the Replication that the remainder is over in Fee.

In a Writ of Mesne, the Plaintiff declares, that he is distrained by three, betwixt whom and him the Defendant is Mesne &c. and the Defendant saith, that one of the three is dead, yet the Declaration is good; for he is a stranger, and the Judgement should not be altered upon the forejudger, for now they two are chief Lords. 10 H. 6. 27: *Mesne* 3:

He ought to alledge a Tenure between the Mesne and him who distrains in his Count, but not by what services certain, because he is a stranger, and that shall not be tried betwixt them, and if he declare of a Tenure of the Mesne in Frankalmoigne, he ought to alledge the commencement of it, and if he declare further of an acquitaile by prescription generally, the Declaration is not double, but the Frankalmoigne waived, he may also referre the Prescription to the Frankalmoigne, and then it is single, and upon that he shall be acquitted, 39 H. 6. 30. and 4 E. 4. 25. *Mesne* 5.

But see 9 E. 4. *hors de son fee* 15. that is in the Election of the Plaintiff, if he will declare that the Defendant holds of him who distrained, or not, but if he do not declare so, the Defendant may well say, that the Land is out of the Fee of him who distrained, and if he do say so in his Declaration

claration, then he ought to traverse the Tenure, &c.

It is not materiall to alledge the quantity of the Services in the Declaration, for that shall be saved to the Defendant by protestation: but if he declares that he holdeth all by one entire Tenure, and one Service of the Mesne, where in truth he holdeth by severall Tenures, and severall Services, the same is naught, 2 H:5.2. *Mesne* 6. of the quantity of the Services, not traversable in a writ of Mesne. See 8 E:3.49. *mesne* 20 16 E.3. *mesne* 30. and 19 E:3. *mesne* 37. Where the Defendant saith, that the land and also other land is holden of him by the Services alledged by the Plaintiff, yet the Declaration was awarded good, so the quantity of the land is not traversable.

He declared that he held of the Defendant who held over of 17. where in truth the Defendant held of a W. and he over of 7. this is a naughty Declaration, 44 E:3. *mesne* 27. The same Law, if he declare that the Defendant holdeth of 7. whereas in truth he holdeth of 7. but in the Right of his wife. 22 E:4.35.

The Count is, that he holdeth of the Defendant by twelve shillings, &c. and that he is distrained for Homage, and ten shillings, (s) to pay two shillings to the Defendant, and ten shillings to the Lord, &c. and yet the Count good, for this is to the action for that part, &c. 30 E:3.4. *Mesne* 39.

He who claims to be acquitted of Service for Service, &c. he ought to declare, that he hath done or tendred the Services to the Defendant, 30 E:3.23. *Mesne* 4. yet the Seisin is not traversable, be it by Prescription or Omelty, 5 E:3.49. As if the mesne bring a writ of mesne, he ought to declare that he is distrained, &c. 17 E:3.44.

A writ of mesne by two husbands and their wives, supposing that they are distrained by their Plow-Cattell, it is a good Declaration, notwithstanding the exception, that the wives cannot have Goods in Common with their husband, 14 E:3. *mesne* 8.

It is sufficient to declare that he was distrained for the Services of the Defendant, without saying which Services, 14 E:3. *mesne* 10.

If the Plaintiff be driven to shew the cause of Acquittal, and he alledge it in a Declaration upon a Deed, or Fine, as for Frankalmoign, &c. which Deed being shewed doth not maintain that cause, but proves Acquittal for another cause, the Count shall abate *per Curiam*, yet a writ of mesne lyeth without a Deed, 4 E:3.19. *mesne* 41.

The Plaintiff in mesne demands Acquittal by reason of a Gift in Frankalmoign, rendring Rent, and the same was challenged, because it cannot be Frankalmoign, where a Rent is reserved, and yet the Court held the Count good, 13 H:4. *mesne* 74.

A mesne bringeth a writ and declares that he is distrained by the Beasts of his Plow, and the Declaration good, although he is not Tenant in Demesne, 17 E:3.44-18 E:3.19.



## IX. Bar of Acquitale, or Extinguishment of it.

**A** Woman mesne, took a husband, had issue, and the Tenant did release the Acquitail to the husband and his heires, the husband and wife died, yet the issue was bound to the Acquitail, notwithstanding the Release to the husband, 38 E. 3. 10. *Mesne* 24.

A Grantee of a menalty over by Fine, shall not oust the Tenant of his Acquitail against the Conuzor and his heires, untill he hath attorned, &c. 40 E. 3. 7. *mesne* 26.

So if the Tenant be attendant to another by his voluntary agreement, although the Defendant hath not granted to him the Menalty, it is a good Bar, 19 E. 2. *Mesne* 60. But if the Defendant saith that the Tenant hath attorned to the King, the Plaintiff may well avoid it, by saying, that it was by constraint, &c.

If the Tenant be attendant to the Lord, he shall not have a Writ of Mesne, nor Acquitail after against the Mesne, 17 E. 3. 41. 4 E. 3. 19 *Mesne* 41.

The Tenant shall not have a Writ of Mesne, nor Acquitail of a thing which himself of right ought to do, or by matter in Fait, 30 E. 3. 4. *Mesne* 39. 49 E. 3. 10. 21 E. 3. 49. nor by the Deed of the Plaintiff himself, 1 E. 1. *Mesne* 72. 4 E. 3. 42. *Mesne* 42. 17 E. 2. *Mesne* 58.

It is no plea that the Plaintiff hath nothing in the Freehold, because the Mesne shall have it, 1 E. 1. *mesne* 73.

In a Writ of Mesne, the Defendant saith, that the Plaintiff hath no Fee, nor Seigniorie, and at issue upon that; *Quare* if it should not be that the Defendant, or he who distrains hath not Fee nor Seigniorie, or whether it shall be intended as the Plaintiff hath brought his Writ as Mesne, which seems the strongest intendment, 14 E. 3. 9.

It is a good Plea in Bar to say, that he who distraineth hath not Fee nor Seigniorie, 27 E. 3. *Mesne* 15. See the contrary, 10 E. 3. 28. And to say that he himself hath not Fee nor Seigniorie is a Disclaimer, 14 E. 3. *Mesne* 7. 28 E. 3. *Mesne* 16.

It is good plea *prima facie*, that the Plaintiff is but Tenant for life, and if he holdeth in Dower, or otherwise, is Tenant to the Lord, as for a Remainder over in fee, the same must be alledged, 13 E. 3. *Mesne* 12. 17 E. 3. 39.

If the Lord in Frankalmoigne grant over the Seigniorie, the Acquitail is extinct, because it shall be onely of the Donor; and now he is attendant to another, 4 E. 3. 19. *Mesne* 41.

It is a good plea for the Defendant to say, that he never had any thing in the Land in Demean, nor in Service, &c. 3 E. 2. *Mesne* 46. But see that the same is no plea but by the driving of the Plaintiff to alledge the speciall binding: As he who saith, that the Plaintiff doth not hold of him, yet

yet he shall be bound by the Deed of the Ancestor, 5 E.2. *Mesne* 64.

Where the binding to the Acquitail is dereigned by the Deed of the Ancestor, it may be avoided, because he hath nothing descended to him from the same Ancestor, 4 E.2. *Mesne* 52. see 14 E.3. *Mesne* 7. 15 Aff. 9.

If a Writ of Mesne, the Defendant saith, that the Husband of her Grandmother aliened the land before the Statute, where he had not any thing but in the right of his Wife, to hold of him and his Heirs: And that she hath brought her *Cui in vita* for the Land, and admitted a good Bar, the Plaintiff said, that the Grandmother made the Feoffment when she was single, before Marriage, &c. 4 E.2. *Mesne* 63.

It is no plea for the Mesne to say, that the Rent whereof he demands Acquitail, is but a Rent-seck, where the Acquitail is claimed by Deed of the Ancestor, 1 E.1. *Mesne* 62. F.N.B. 136.

Where the Plaintiff claims Acquitail of Suit, it is a good plea for the Defendant, that he nor his Ancestors never did such Suit, 11 H. 3. *Mesne* 75.

A Writ of Mesne, supposing that the Defendant was Mesne between him and the Queen, who distrained, &c. It is a good plea that he held immediately of the King, 29 E.3. *Mesne* 79.

Where the binding is made by prescription against the Defendant and his Ancestors, for the Plaintiff and his Ancestors, it is a good plea, that the Plaintiff hath an elder brother, 11 E.3. *Mesne* 36.

But such Acquitail shall be well dereigned against one of the Sisters only, where the whole Menalty is allotted to her, yet all of them together shall pay Relief for it, &c. 19 E.2. *Mesne* 61.

Out of the Fee of him who distrains is a good plea, 9 E.4. *Hors de son fee* 15. 12 E.3. *ibid.* 24. 17 E.3. *Issue* 32. contrary, 10 E.3. 28.

Lord, Mesne, and Tenant are, if the Lord purchase the Tenancy, the Acquitail is extinct, 2 E.2. *Extinguishment* 6.

Note that he who recovers the Acquitail shall have no more but the Services alledged upon the Recovery, and for no other thing, nor against another Lord.

X. Where the Tenant for life, or in Dower shall have a Writ of Mesne, and where the Writ shall be brought against them.

Tenant for term of life shall not have a Writ of Mesne, but when the Remainder is over in Fee, so that he is Tenant to the Lord, 15 H.6. *Mesne* 2. 17 E.3. 34. 13 E.3. *Mesne* 12.

Tenant in Dower shall have a Writ of Mesne, 13 E.3. *Mesne* 12. 28 E.3. *Mesne* 17. 5 E.1. *Mesne* 72.



He who hath a Deed of Acquitail against the husband of Tenant in Dower, of the Menalty and his Heirs, shall have a Writ of Mesne against the Heir, living the Tenant in Dower, not against him, 31 E. 1. *Mesne* 55.

Tenant for life shall have Covenant against him in the Reversion, but not a Writ of Mesne, 17 E. 3. *Mesne* 33.

If the Mesne leaseth his Menalty for life, the Writ lyeth against the Lessee, not against him, 12 E. 3. *Mesne* 11. 30 E. 3. 29. but it is there said, that the Judgment against Tenant for life shall not bind him in the Reversion.

In a Writ of Mesne, the Defendant saith, that he hath but for life in the Mannor to which the Services are regardant, the Remainder to T. and that this Writ is a Writ of Right, &c. And they were at Issue, whether he had fee, or for life. 10 E. 3. 58. *Mesne* 21.

*Birry* saith, That the Tenant for term of life shall have a Writ of Mesne against his Lessor, as well as Tenant in Dower shall have it, *quare* 4 E. 2. *Mesne* 51.

A Writ of Mesne doth not lye against Tenant by the Curtesie, Tenant of the Services, but against the Heir in Reversion, which see, 5 E. 2. *Mesne* 52. 14 E. *Mesne* 71. contrary.

Mesne for Tenant for life against his Lessor, 21 E. 3. 49. *Mesne* 49. 4 E. 2. *Mesne* 51. 6 E. 2. *Mesne* 65.

A Writ of Mesne lieth against Tenant in tail, but not *fore-judger*, 14 E. 2. *Mesne* 70. But see there, because that the Tenant in tail was fore-judged in a Writ of Mesne, the Issue could not distrain for the Services, the Judgment standing in force.

Also it lieth for Tenant in tail, *r. E. 1. Age* 119. 120. 21 E. 3. 49.

*Birry* saith, that this Writ doth not lye, but betwixt very Lord, and very Tenant, 2 E. 2. *Extinguishment* 6.

XI. *Where fore-judger shall be in a Writ of Mesne, and where in a Scire facias, and where against the Lord alone.*

**T**He Mesne shall never be fore-judged after he hath once appeared, 10 H. 6. 26. 13 H. 6. *Mesne* 3. *contr.* 13 E. 2. *Mesne* 68. and 46 E. 3. 31.

In a *Scire facias* upon Acquitail confessed in a Writ of Mesne, the Mesne shall not be fore-judged, but shall be alwaies distrained untill he appear, and then he may plead any plea in Bar, or in Extinguishment of the Acquitail, and the Judgment in this Writ is not that he shall acquit, but that he shall be distrained to acquit, 50 E. 3. 23.

But see 31 E. 1. *Mesne* 53. and 13 E. 2. *Mesne* 68. That the Mesne shall be fore-judged in a *Scire facias* upon default, or upon Verdict passed against him, and therewith agreeth the Statute of West.

2. cap. 9. *F. N. B.* 136. and 13 E. 2. upon a Verdict passed against the Mesne, the Tenant who sued proces of a Statute upon a *Scire facias*, could not recover damages, without having the Mesne fore-judged, for which he was non-suit, and took the proces at the Common Law.

A Writ of Mesne against Husband and Wife, fore-judger doth not lye for the benefit of the wife, but proces at the Common Law, 7 E:3.41. *Mesne* 18.

Note, fore-judger against the husband and wife is Error, not void by Statute, for *Cui in vita* doth not lye for the wife: Other Serjeants held it void 9 E:2. *Mesne* 67. See 32 E:3. *Receit* 127 by Sadler and Mombray, that the Judgment is void, 30 E:3.28.

An Infant shall not be fore-judged, 7 E:3. *Mesne* 66. Fore-judger shall not be granted against Tenant in tail, or Tenant for life, by the Statute, but where it was granted, the Issue in tail could not distrain for the Services, untill the Judgment given against his Ancestor, was defeated by Error, 14 E:2. *Mesne* 70.

The Heir of the Conusee of Acquitail, brought a *Scire facias*, and being found that he was distrained for the default of the Conusor, he recovered damages, but no fore-judger, because he is not the same person to whom the Conusans was, &c. 18 E:2. *Mesne* 57.

So if the Conusee bring *Scire facias* against the Heir of the Conusor, &c. no fore-judger shall be, because not the same person who acknowledged, &c. so out of the Statute, but if he do appear and be fore-judged, or it be found against him, he shall pay damages, and also shall be fore-judged 46 E:3.31.

Fore-judger doth not lye but where all those which have any thing in the Menalty, are named in the Writ, and also appear, see this 3 H: 6. 38. 19 E:3. *Error* 1.

Note, the Statute saith, that by *Istud statutum providetur remedium scilicet modo, cum sit unus Medius tant. inter Dominum distringentem, & tenantem*, but this is onely to be intended of fore-judger, for the Writ lieth, if there be twenty Mesnes, and for each against the other.

Fore-judger doth not lye against him who hath but for life, as a Menalty unto the husband and wife, and to the Heirs of the husband, they shall not be fore-judged, and that is because one of them hath but an Estate for life, and not onely for the cause of Coverture, &c. 5 E:3. *Per quod servitia* 16.

Note that Fore-judger, nor Proclamation by the Statute, cannot be against one Defendant, if not against them all; and therefore if in a Writ of Ward, or Mesne against two, one be returned distrained, and that the other hath nothing, yet no Proclamation shall issue forth, untill the other be returned warned also, for the Proclamation cannot be severed nor apportioned, nor the fore-judger upon it, 19 E. 3. *Proclamation* 5.



XII. *Where Judgment shall be for to recover the Acquitail before the point tryed in the Originall, where he shall not have Judgment for to recover the Acquitail.*

**U**Pon Issue joyned and found, that he was not distrained in his default, the Plaintiff shall recover the Acquitail presently, 44 E. 3. 2. *Mesne* 24. 11 H. 4. 51. 22 R. 2. *Mesne* 23. 16 E. 3. *Mesne* 31. 15 E. 3. *Mesne* 38. 18 E. 3. 19. *Mesne* 35. 5 H. 7. 3. 16 H. 7. 9.

*Scire facias* upon a Fine of an Acquitail confessed in a Writ of Mesne, at the *Sicut alias*, the Sheriff returneth Issues, the Defendant doth not appear, the Plaintiff could not have a Writ of Inquiry of Damages, for the Judgment in this Writ shall not be other, but that he shall distrain for the Acquitail, and shall never render damages, where he makes default in this Writ, so as Distresse shall be continued till he appear, or be forejudged, 50 E. 3. 23. *Mesne* 29.

Judgment to recover the Acquitail, where the Writ was abated by Judgment; as where the Mesne bringeth the Writ, and Issue is taken not distrained in his default; and no speciall matter alledged by the Plaintiff to maintain the Writ: And found the Acquitail due, but that he was not distrained, for he could not be when he was not Ter-tenant, for which the Writ abated, and Judgment of Acquitail for the Plaintiff, 18 E. 3. 19. *Mesne* 35.

But upon that Issue found directly for the Plaintiff, he shall recover damages, and a Writ to distrain the Defendant to acquit, &c. 14 E. 3. *Mesne* 7. and therewith agrees 15 Aff. 9. *Mesne* 44.

It is holden 31 E. 3. *Judgment* 136. That no Judgment shall be given upon this, issue not distrained, before it be tryed.

XIII. *Where after Judgment to recover the Acquitail, or after confession of it, the Plaintiff shall have a Scire facias, or a Distringas ad acquietandum, &c.*

**S***cire facias* against the Heir upon Recovery in Mesne against the Ancestor, he had judgment against the Heir, and *Distringas ad acquietandum*, which was not seryed nor continued, and two or three years after the Plaintiff prayed remedy, and had a Distresse as the Statute requireth, although that the Judgment was long time before, and proces of execution granted upon it, and not pursued, 45 E. 3. *Mesne* 28. the Heir shall not be fore-judged by default, because he is out of the Statute, which speaks only of the Conusor, &c. but a Distresse infinite shall issue, 46 E. 3. 31. *Proces* 153.

Upon

Upon issues returned at *alias Scire facias*, against him who hath confessed the Acquittal, the Plaintiff prayed a Writ to enquire of the Damages, and could not have it, for he shall not have damages in this Writ, if the Defendant never appeared, but Distresse infinite untill he appear, 50 E. 3.

13. Mesne 29. 45 E. 3. Proces 152.

The Judgment in Mesne was, that the Plaintiff should recover, & *dam-  
na & praeceptum fuit* to the Sheriff, *quod distringeret ad acquietand.* 34 E. 3.

Mesne 7. 15 Aff. 9. Mesne 44.

Hee who sues Proces upon the Statute shall never have damages without fore-judger of the Mesne, but he may be non-suit, and sue at the Common Law, 13 E. 3. Mesne 68.

*Distring. ad acquietand.* upon the Acquittal confessed a year before, the Defendant came, and pleaded, and afterwards cast a Protection. But note, he could not have pleaded a plea to defeat the Judgment in the Originall, but only to stay the Execution, 31 E. 3. Protection 53.

#### XIV. When the Mesne shall have a Writ of Mesne.

In a Writ of Mesne brought by the Mesne, the Writ and Count shall be generall, that he was distrained by the beasts of his Plow, and a good Count, and not distrained in his default a good issue, but upon such issue the Plaintiff ought to alledge all the especiall matter, so as the Jury may enquire upon it, 17 E. 3. 44. Mesne 34. 18 E. 3. 19. Mesne 35. And there the Writ was abated upon such generall issue taken, and verdict, that he ought to have the Acquittal, but that he could not be distrained, because he had nothing in Demesne, &c.

Note, the Mesne shall not have Mesne, if not in respect of the damages lost to the Tenant by the default of his Mesne, and it behoveth that execution be had against him of the damages, &c. And his Mesne shall have Oyer of the first Record, because this Writ is grounded upon it. Yet *Wilby* saith, That because this is an Originall Writ, he shall not have Oyer, but there the Mesne shall alledge all the matter in his Count, 20 E. 3. Mesne 144. E. 3. 11.

It is holden t. E. 1. Mesne 72. That the Mesne shall have a Writ of Mesne, &c. 29 E. 3. Mesne 79. If there be twenty Mesnes, every one may have a Writ of Mesne against the other, and 34 H. 6. 47. Avowry 25. And see also for that, 17 E. 3. 39. and 44.

The Mesne being Tenant for life of the Tenancy, shall have a Writ of mesne against his next Lord, 17 E. 3. 39.

#### XV. Where



XV. *Where the Defendant in Mesne may disclaim in the Seignior.*

**P**ole saith, That the mesne cannot disclaim in a Writ of mesne, because upon this, a writ of Right for disclaimer doth not lye, so not like to Avowry. *Schard* and *Ald.* contrary, when the Acquital is laid for cause of Seignior between them, &c. But *Scrope* saith there, that after that the mesne hath said that he hath nothing by descent, he shall never disclaim in the Seignior, for such pleading is a confession of cause of Acquital, 14 E:3 *Mesne* 7.

*Finchden* saith, That the mesne may disclaim in a writ of mesne, 44 E:3.2. *Mesne* 27.

In a writ of mesne, the Defendant did disclaim, the Plaintiff would have estopped him, because that in a writ of mesne against his Father, whose Heir he is, he pleaded that he was not distrained in his default, and thereby did acknowledge the Acquital, and no Estoppel: but *Wilby* saith, That against a speciall Deed of his Father of Acquital, he shall not disclaim, 28 E:3. *Mesne* 16.

The mesne may stay the Acquital by Disclaimer, if not that he be bound by Charter, 18 H:3. *Mesne* 77. or by a Ternure in Fait, or by Prescription, and then he cannot, 5 E:2. *Mesne* 64. 16 H:7. 1. acc. Where it is said, that Disclaimer lieth where the Acquital is dereigned by Prescription, as Homage Ancestrell: *Litt.* agrees, if not, that the mesne be seised of the Services of such Tenant; And see 16 H:7. 1. where the Plaintiff did aver his writ after such Disclaimer, to save damages.

In mesne the Defendant disclaimes, the Plaintiff saith, that he holdeth of him by Fealty and Rent, and he seised of the Services. The Defendant, That he had but a Rent-seck, and at issue upon the Tenure. *Watson*, which proves that he cannot disclaim but said there, that the Defendant confessed that he had a Rent-seck, and the Plaintiff said, that it was a Rent-service, which was a Tenure, and he seised, by which the generall issue was taken, if he held of him, or not, 20 F:3. *mesne* 13.

Mesne by Tenant in tail against him in the Reversion, he may well disclaim if he be bound onely by reason of the Reversion, if not, that he be bound by a Deed of Acquital, 8 E:3. 26. *mesne* 29. see 40 E:3. 27. *Finchden*, vi. 22 E:4. 35.

XVI. *The manner of Acquitter of the Plaintiff, and to discharge himself of the Damages.*

**W***ilby* saith, That the manner of Acquitter in Mesne, is not to recover in value, as upon a Warranty, but the Defendant shall be distrained by his Cattell, to put his Beasts in the Pound for the Beasts of the

the Tenant, 14 E:3. *mesne* 7. and therewith agrees, 32 E:3. *mesne* 35. 17 E:3.6. and 44. 34 H:6.47. and 15 E:3. *foynder in Aide* 15. and 39 H:6. 39. to put his Cattell into the land to be driven for the Cattell of the Tenant, or to put his into the Pound, in the place of the Beasts of the Tenant, 15 H:6. *Mesne* 2.

XVII. *Mesne against him who hath a Reversion, or Remainder, where there is a Tenant for life, Mesne, and the Writ doth not lye against him.*

Lord, Mesne, and Tenant by Homage, the Mesne grants the Menalty for life, the Tenant attorns, and afterwards is distrained for Homage, he shall have Mesne against the Lessee, 12 E:3. *Mesne* 11. *Quere* for Tenant for life shall not do Homage, 40 E:3.7. *Mesne* 26. and 10 E:3.38. *Mesne* 21. and they were at issue, if the Defendant had the Mannor to which the Services were regardant in fee, or for term of life.

A Menalty was granted unto the husband and wife, and to the Heirs of the husband, who acknowledged the Acquitail for him and his Heirs, *in per qua servitia*, and died, and his Heir was bound to acquitail, living the wife, &c. Fitz. It is a marvellous case. So it seems by him, that for cause of Lordship only, he in the Remainder shall not be bound to acquitail, living the Tenant for life, 5 E:3. *Mesne* 56.

It is said, that Mesne doth not lye against the Heir in Reversion, living Tenant by the Curtesie, because he is Tenant to the Lord, 14 E:3. *Mesne* 72. but 4 E:2. *Mesne* 52. *contr.* And the mesne lieth against the Heir in such case, See F.N.B. 136. ac.

XVIII. *Where a man shall have a Writ of Covenant, and not a Writ of Mesne for not acquitting.*

The Tenant doth enfeof an Abbot, the Lord reciting it doth confirm to the Abbot to hold in Frankalmoigne, and upon that Deed he was bound to acquitail in a Writ of mesne, and the Abbot not put to a writ of Covenant, 5 E:2. *Mesne* 46. *quare* if he was not the same person.

Markham thinks, that mesne doth not lye upon such a Deed, which doth not begin with the Tenure; but Billing contrary, and with him agrees, F.N.B. 136.4 E:4.25.

Mesne against the Heir upon acquitail confessed by a Fine by the Ancestor, 4 E:2. *Mesne* 52.

See 14 E:3. *Mesne* 7. Where Schard saith, That a speciall acquitaile doth



doth not bind the Heir without Affets, because it is but a Covenant. Also he saith, that a Deed without a Tenancy is no cause of acquitail.

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XIX. *Where a man shall have a Writ of Mesne before notice given to the Lord, and where before Attornment after the Seigniorry is granted by Fine.*

**I**F the Tenant be distrained for such Services which he holdeth of the Mesne, he shall have a Writ of Mesne, without any notice given to the Mesne; And if for others, then he ought to give notice to the Mesne, and pray him to take his beasts out of the Pound, and then he shall have mesne, and not before, 15 H.7. M.2. see 3 E.3. Mesne 14. Where it is said, that at this day the Tenant shall not recover damages against his Mesne for not acquitail, without acquitail demanded before.

If the mesne grant over his Menalty by Fine, yet a Writ of mesne lieth against him, untill the Tenant hath Attorned to the Conusee, 40 E. 3. 7. Mesne 26.

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XX. *Where the Menalty shall be extinct by act in Law, and where it shall remain in the Lord, in the place of his Seigniorry.*

**F**or fore-judger of the Mesne, the Menalty is extinct and the Tenant shall be attendant to the Lord, as the mesne was, although it is by greater Service, because his own Act, 7 E.3. 8. 18 E.3. 18.

If the mesne disclaim in a writ of mesne, the Tenant shall be attendant to the Lord for the Services, although they be many, 14 E.3. Mesne 7.

But if the mesne be attainted, the Tenant shall be attendant to the Lord only, for the Services which he ought to do to the mesne, 1 E.3. 6. So if the mesne dye without Heir, 10 E.3. 54. contrary if he held of the mesne by Frankalmoign, 17 E.4. 12. by Needham.

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XXI. *Proces in a Writ of Mesne.*

**P**ROCES upon Judgment against the Heir in *Scire facias*, not pursued, 45 E.3. Mesne 28. vi. 50 E.3. 23. Mesne 29. Proces upon Issues recovered at the *alias Scire facias* against him who hath notice of the Acquitail by a Fine, &c.

REPLEGIARE.

# REPLEGIARE.

## I. Where the place and day are traversable in a Replevin.

**A** Replevin of taking in *G.* in *D.* the Defendant saith, that *G.* is in *S.* not in *D.* and makes Avowry, and good, for the place is traversable here, otherwise it is in Trespasse of Battery, where no Freehold comes in question, 2 *H.6.Replegiare* 1. And although he is but to have return by Avowry, yet the Plaintiff ought to maintain his Writ, 41 *E.3.Repl.* 29. 9 *E.* 4. 41.

If the Plaintiff allow the taking in two places, (*s*) in *D.* and *I.* If the Defendant saith, that the two places are in two other Townes, (*s*) *S.* and *T.* he ought to alledge in certain, in which of the Towns, each place is. 20 *H.6.Repl.* 6. 22 *E.* 4. 51.

It is no plea in a *Homine Replegiando*, that he took him in another place, without shewing cause. And there it is said, that a man need not alledge the place in his Count, in a Replevin, 9 *E.* 4. 14. contrary of the Count, 12 *E.* 4. 51. that he ought to alledge the place.

*Repleg.* of taking the first day of *August*, he avowed for an Amercement in the Court, the fifth day of *August*, and that he took the Cattell in *September* such a day, without that, that he took them the first day of *August*, and the Issue recited; yet it was said, that the day is not traversable in a Replevin, nor in Trespasse, but generally, that before, or after, 61. 21 *H.6.Repl.* 7. But see, 12 *H.6.4.* and 12 *E.* 4. 6. That if he justifie at another day in Trespasse, he shall not traverse the day supposed, but the time generally before, or after.

In a Replevin of two Oxen, the Plaintiff was Non-suit, and Return awarded, and they being esloigned they had two Cowes of the Plaintiffs for them, the Plaintiff did remove the plea, and counted of two Cowes, supposing them to be taken the same day that the Oxen were, and holden that the Count was not good, and that he ought to have a new Replevin of the Cowes, if the Defendant have not cause to distrain, and shall count



from the day of the return awarded in the Liberty; For which they were at Issue, if these Cowes were taken after the Writ, (s) before the return, &c. and the day traversed, *M. 13 E. 3. Repleg. 37. acc.*

The day is well traversable for Damage-feasant, not for Rent, if not, that he shew the especial matter, as that it was at another day, at which day he was out of his Fee, *P. 10 E. 3. Avowry 158.*

II: *Where he who pleads in abatement of the Writ, shall avow to have Return.*

**H**E who saith, that he took the Cattell in another Town, ought to avow, *2 H. 6.* So alwaies when by his plea he confesseth the taking, *13 E. 3. Rep. 37. 41 E. 3. Rep. 29.* So if he saith, the property is to one of the Plaintiffs only, *34 H. 6. Rep. 1.*

So where he saith, they were anothers beasts, *47 E. 3. Rep. 30.* Otherwise it is if he say, the property is in another, because then the Plaintiff hath no cause of Action, *34 H. 6. 37. 9 E. 4. 41.*

If a man bring a Replevin of two Cowes, and the other saith that they were two Oxen, &c. he ought to avow, although that the taking were at another day. But *Schard* conceives, he may say generally that he did not take the two Cowes, and then he shall not avow to have return, *13 E. 3. Rep. 37.*

If the Plaintiff count that he doth yet detain them, and the Defendant may say, that they are delivered, he ought also to answer to the taking, *25 E. 3. Rep. 34.*

If the Plaintiff bring a new Replevin, where he ought to have a second deliverance, the Defendant shall have Return without making Avowry, *21 E. 4. 7.* And the Defendant may well say, that the place where, &c. is neither Town, nor Hamlet, &c. without making Avowry, *4 E. 3. Gager deliverance 9.*

III. *Where in a Replevin after it is removed by Pone, or Recordare, a speciall Writ shall issue to warn the Plaintiff, and what shall be done if the Plaintiff or Defendant do not appear at the day of the Pone or Recordare, and how it shall be removed.*

**A** Plea was removed at the Suit of the Defendant by Pone, and the Writ was, *Dicas predicto* the Defendant, where it should have been *predicto* the Plaintiff: And because the Plaintiff was not warned, a speciall Writ was awarded, *3 H. 6. 3. Rep. 2.*

The Sheriff returned the *Pluries* into the Kings Bench; *Quod fecit delictum*, and that no other Writ came to him: and now the Plaintiff did not appear: And it was in a manner agreed, that this Court is now ceased, and the power of the Sheriff determined; and if it be so, that the *Pluries* doth not give day to the Plaintiff nor Defendant, as the *Pone*, or *Recordare* doth, *quare*, if the Defendant may Non-suit the Plaintiff, or that speciall proces shall go against the Plaintiff. But by the Argument after as appears in the Book at large, the plea did remain with the Sheriff, because he had served the writ, 2 H:7.5. *Rep*: 16. *Knivet* agrees, 43 E:3.26. *Rep*: 31. And if the Plea in the Common Pleas, *quare* what shall be done, because the *Pleges de prosequend.* cannot recover, nor are returned, M:6 H:7.5.

Upon the *Pluries* not returned, the party had a writ to the Coroners, to attach the Sheriff, and to make delivery, &c. who returned the Sheriff attached, and that he had found sureties, and that the Cattell were esloigned, &c: for which Distress was awarded against the Sheriff, & *Withernam* against the Defendant, and Issues returned against the Sheriff, and the *Withernam* served, but none appeared to take the Cattell: *Knivet*. The power of the Sheriff is determined upon the *Pluries*, and the Coroners have not power to hold plea in the County by the writ to them, but only to make deliverance, but here he hath day upon each of the writs by the Rent, and so it shall be determined here: And because the Defendant was in Court, ready to make deliverance, the Plaintiff found sureties to prosecute, &c: And a writ to the Sheriff to deliver the first beasts, and to attach the party, and upon that returned shall plead with the party, and recover his damages, if there be cause, &c: but no delivery of the *Withernam*, 43 E:3.26. *Rep*: 31.

*Replegiare* removed by *Pone* at the suit of the Defendant; and afterwards he would have pleaded that the Plain: was Non-suit in Court, where the Bayliff of the liberty had Conusance of Plea of *Withernam*, and he could not have the plea, because the Remover is his own Act, and if he make default afterwards, because his appearance is of Record in the Chancery, Grand Distresse shall issue forth against him, and if he say nothing, he shall be as not Defendant: and if the Plea had been removed by a *Recordare*, *Pone pervadios*, should have issued forth against him, M:9. E:3. *Rep*: 37.

A Plaint was removed by *Pone* at the suit of the Defendant, and at the day the Plaintiff was called in this Form; *I. P.* Thou lovest thy writ, &c. this is good, although it was not by Writ; and upon default he shall be Non-suit without proces against him, as if it were by Writ, and removed by the Defendant by *Pone*, or *Recordare*.

But if the Defendant who removed it had made default, Distress and Proces out of Outlawry had been against him, but if he maketh default when the Plaintiff removes the Plea by *Pone*, or *Recordare*, *Pone* shall issue against him who is attached, and Distress, and Proces of Outlawry, 21 H.6. *Non-suit* 5. At.



## Replegiare.

At the *Pluries* the Sheriff doth return that the Cattell are esloined, and the *Withernam tardè*, and the defendant appeared, and the Plaintiff shall not declare against him, which he shall do of a *Withernam* out of the Chancery returnable in the Kings Bench &c. but here no pledges are returned, and the *Pluries* doth not give day to the partie, but unto the Sheriff to answer to the contempt, and if he return *elongata*, the party may averre the contrary, but the Defendant hath not day by the *Pluries*, but by the *Withernam*, and here the same is not served, for which cause he shall not declare &c.

But if the *Pone* to remove the Rent be returned *tardè*, yet the Plaintiff shall be compelled to declare &c. 22 H.6. *four.* 34.3 H.6. *acc.*

One distrained in the County of *B.* and drove the Cattell to the Honor of *W.* where &c. in the County of *Berks*, the Plaintiff sued in *W.* and the Defendant sued a *Recordare* &c. and at the day the Plaintiff appeared, and the Defendant made default, and Proceſſe awarded against him in *Berks*. and upon *Nihil* returned, *Capias* and *Exigent* awarded, the defendant did alledge that the *Exigent* did not lie, being awarded into another County, then where the taking was, and that seemed to be the opinion of the Court, for he was bailed, but because he had appeared, he was forced to answer, because the Originall was well sued &c. P. 29 E.3. *Proceſſe* 216.

### I V. Barre in a Replevin or second Deliverance.

**I**T is a good Plea in a Replevin to alledge the property to be in a stranger, and not in the plaintiff, but not so in Trespasse, 20 H.6. *Reple.* 5. 33 E. 3. *Repleg.* 44. the Defendant shall have good answer to the taking at the day supposed by the Plaintiff in a Replevin, M.13 E.3. *Repleg.* 37.

In a *Replegiare*, the Defendant was received to say, that he did not take the cattell, and yet the opinion was, that he should answer to the deteining of them, P. 5 E. 2. *Repleg.* 21.

*Repl.* against *C.* and others, *C.* said, that he did not take &c. the others did justifie in the Right of *C.* and agreed, that they should not recover, although the justification be found, because *C.* had denied the taking &c. 22 H.6. 53. See 42 E. 3.6. that he who hath denied the taking shall not joyn in aid to the others who justifie in his Right.

*Replegiare*, The Defendant shewed that in a plaint of the same Cattell, and taking he claimed property, for which it was abated, and the plaintiff sued *proprietas probanda*, and the property found for us, yet the plaintiff was received to averre, that they were his cattell, and not the cattell of the Defendant, H.32 E.3. *Repl.* g. 35.

The Plea was removed for the Plaintiff, notwithstanding property claimed by the Defendant, and because the Deliverance could not be made

made property being claimed, and properly could not be tried without a Writ, a *Replegiare* was awarded to the Sheriff, and at the *Alias, vel Causam*, he returned that property was claimed by the Defendant, upon which a Writ to trie the property was awarded, and the same found to the Defendant, yet he was driven to answer to the Plaintiff before that triall of property was of Record in the Court, 30 E.3. 22. *Repleg.* 36.

See this 44 E.3. 18. and the Defendant claimed property here, as the beasts of his villain, *Replegiare*, declaring of three Lasts of Herrings taken in a Ship, the Defendant doth claim them as Wreck of the Sea &c. property now is not traversable, but he may plead any thing, which proves them not to be Wreck, as that the defendant took them out of the custodie of the Marriners, and the issue was upon it, 5 E.3.3. *Repleg.* 41. 21 E.4.76. That claim of property before the Sheriff upon a writ, shall not abate the Writ, but the same shall be tried by another writ.

In a *Repleg.* against him who had a return of the same Cattell irreplevisable upon a Non-suit in a second deliverance, the defendant did claim property because of that Return, and the same was found against him, for which an Attachment was awarded, notwithstanding that he had Return irreplevisable, T.19 E.2. *Repleg.* 26. But see where a man doth avow for damage feafance, and hath a Return &c. he shall hold the Cattell, untill bounds be made, and if he refuse the amends, the Plaintiff shall have a Writ to the Sheriff to inquire &c. in the presense of the parties, *si interesse voluerint*, what damages he hath, and if the Plaintiff make to him sufficient amends according, at the triall, the other shall deliver him his Cattell, *secundum valorem*, which was at the Return awarded, P. 16 H.6. *Return des avers*, 2 M.31 E.3 *Reception* 5.

It is a good Plea, that the beasts belong to the Plaintiff and a stranger in common, and it was holden that the Tenant shall have a *Replevin* against his Lord after he hath his Cattell again, because he could not have an action of Trespasse against him for the taking, 33 E.3: *Replevin* 44. *temp.* E.1: *Repleg.* 28. 13 H.7.28.

If the owner tenders amends for damage feafance, yet in a *Replevin* he shall not recover damage for the taking, but for the reteining; for they are two warnings and two answers must be to them, *temp.* E.1. *Repleg.* 27.

The defendant said, that he bailed the goods to the Plaintiff to rebail to him when he should be required, and that the Plaintiff carried them to D. and that he retook them, it is no plea that he did not give colour, because he hath not interest, otherwise it should be, if he had given him an interest for a certain time, or upon condition, 5 H.7.18. *Colour* 33.

The defendant avowed for some of the Cattell damage feafance, and that the others followed, the Plaintiff did alledge tender of amends, and upon that *Horton* conceived, that he ought to have had detinue, and not *Replevin*, 13 H.4: 19: *Hill* agrees, 13 H.4:14. yet it was one taking, and by the following &c.



## V. Count in a Replegiare.

**I**N a *Replegiare* of two oxen, the defendant upon Non-suit had a Return, and the Plaintiff did esloin the beasts, so as the defendant had two Cows in their steads, and afterwards the plaintiff did remove the Plea by *Pone*, if the Plaintiff declare of the first taking, it shall be of two oxen, and not of the Cows taken in the steads of them, &c. *Parn.* said, that upon that matter the Plaintiff ought to have a new *Replegiare* &c. and declare of the two Cows of the second taking, and *Thorp* said, that he shall declare from the day of the Return awarded, and not from the day of the first taking, and so the day is traversable, *M:13:E:3: Repleg. 37.*

Upon the like Return of two Bullocks in the steads of two oxen esloins, the Plaintiff sued a Replevin of the two Bullocks, and upon the matter he was driven to amend his declaration (s) of Oxen, and that was by sufferance after the Entrie &c: *M:33 E:3: Avowrie 256.* and when he declares of the first taking, it ought alwayes that the Avowrie be made of the same taking, *M:2:E:3: Avowrie 171.*

In *Replegiare* of Cattell taken in *D:* (s) in *A:* and *C:* he need not alledge how many beasts he took in one place, and how many in the other, 20 *H.6. Repleg. 6.* See that he shall shew the same, 29 *E.3 Avowrie 250.* There it was in ancient Demesne.

The Count was good of three severall takings, in three severall places, *P.16 E.3. Avowrie 158.*

The Defendant sueth a *Recordare* to remove a Plaint betwixt divers Plaintiffs and divers Defendants, the Plaintiff would have declared upon severall Declarations, one of two beasts, the other of three &c. and he was not permitted so to do, because there was but one Plaint removed, and by one Writ, and if there be severall Plaints, they shall remain in the Court where they were, 3 *H.7.14.*

It shall not be entred into the Roll, that he took the Cattell and impounded them, and impounded doth detain them against Gages and Pledges, as the form of the Count is, but onely *quod cepit & detinet*, 1 *E.4.3. Repleg. 11.*

A man hath a generall Writ, and declares of beasts taken, which do belong to another, and the same being excepted unto, he did maintain it, because they did manure, and were Levants and Couchants upon the Lands, 42 *E.3.18. Repleg. 30.*

I shall have a generall Replevin of Goods taken out of my possession, which were delivered unto me to re-deliver, 21 *H.7.14.14 H.4.16.*

Upon a Declaration that he doth yet detain, the taking of the Cattell shall be put in the Declaration, 12 *H.4. Rep. 20.* and upon default of the Defendant

Defendant after appearance he shall recover the value of them, in damage, A Declaration of a taking in the high way, is good, 11 R. 2. *Avowry* 87.

A Replevin by Executors is good, without shewing in the Declaration, if the taking were in the time of the Testator, or in their time, because in each Case they shall recover, 34 E. 3. *Avowry* 257.

VI. *What shall be done after Property claymed, or tried.*

**A**T the *Pluries Capias* in the Kings Bench, the Sheriff returned that the Defendant claimed Property, and upon the *Proprietate probanda*, it was found for the Defendant, and *Markham* was of opinion, that yet the Plaintiff might proceed, because it was but an Enquest of Office, and notwithstanding that Triall, the Plaintiff might have a speciall Property. *Littleton*. Then that ought to be shewed before the Sheriff, *Quare* 1 E. 4. 9. *Repleg.* 12. But here, if the Property be found for the Plaintiff, the Sheriff shall make him deliverance, and further shall attach the Defendant to answer to the King for the contempt, and dammages to the Plaintiff for the false claim, and so is the Writ, and then it seems upon the attachment, nothing shall be debated, but the false claim, *Quare* of that, 1 E. 4. 9. and T. 19 E. 2. *Replegiar.* 26. He sued an attachment against the defendant, after &c. and there the defendant claimed Property by a Return irreplevisable before, 30 E. 3. *Proprietate probanda* 2.

In a *Recordare*, declaring, that the defendant is yet seised, the defendant said, that upon a Plaint in the County, he claimed Property, upon which the Plaint was abated by Writ to the Sheriff, the Property being found for him, and demanded Judgement if upon a Plaint abated, this *Recordare* would lie, and the opinion was, that he should answer, and that the Plaintiff might averre the Property to be to him, notwithstanding the Verdict, H. 31 E. 3. *Repleg.* 35.

But see, 30 E. 3. where after Property claimed before the Sheriff, the Plaintiff sued a *Recordare*, and because the Property shall not be sued without Writ, he sued a *Replegiare*, and the Sheriff returned Property claimed, and sued *Proprietate*, and found for the defendant &c. and now the Plaintiff declared upon the *Recordare* against the Defendant, *Fyff.* is not the Writ abated, when the Property is found for the defendant? *Green*, that is not proved by the Record, and that he said, because it was not yet returned, *ut dicitur*, 30 E. 3. *Repleg.* 36.

Upon Property claimed in Court in a *Replegiare*, it shall be tried here by Verdict, and the Writ shall not abate by Property claimed in the Country, but it shall be tried by another Writ sent to the Sheriff, H. 5 E. 3. *Replegiar.* 41. See the division *Proprietate probanda* 3. for this matter.



VII. Where a man shall have a Replevin, or Recaption of things not taken, and a speciall Replevin, where he hath not property and Replevin of the Beasts of another.

**R**eplegiare, of the Beasts of his Villain taken *contra pacem*, and withby awarded the Writ good, though the Lord had not actuall possession of them, 19 E:3. Rep:32. But yet see that it was there said, that the Villain might have sold the goods before, and then no remedy for the Lord: And there Issue was taken, if the property of the Goods were in the Villain or a stranger, as the Defendant alledged. So if the Defendant claim property, and this bringing of a Replevin by the Lord of the Cattell of his Villain, is a claim of property. The same Law where a man brings a Replevin of the Beasts of his wife taken before marriage, T:33 E:3. Rep:43.

Executors shall have a Replevin of goods, taken in the life of the Testator, and shall recover damages, 34 E:3. Avowry 257. 18 E:1. Rep. 24.

A Replegiare was of a Sow and Piggs, As to the Sow the Defendant did avow for Damage-feasant, and as to the Piggs, that he did not take them: And as for the Sow, it was found for the Avowant; And as to the Piggs it was found, that at the time, &c. the Sow was with Pigg, who farrowed in his possession. And as to the Sow, the Plaintiff took nothing by his Writ, but recovered damages for the Piggs, for the deniall, 22 E:4, 5. 18 E:3 48. But Littleton saith, That if the Sow had not been with Pigg till after the taking. the Plaintiff should not have recovered damages, &c. *Quere* 12 E:4. See such matter of second deliverance, 26 H:8. 6. 22 H:7. 6.

VIII. Where and in what place Surety shall be taken to pursue, &c. and to return the Cattell.

**A**T the *Withernam*, the Coroners did return, that they had taken, &c. but that none came for the Plaintiff, and now the Defendant came, remedy to Gage Deliverance of the first taking; Now the Plaintiff put in sureties to prosecute, and to return the Cattell, if, &c. And had a Writ to the Coroners to have Deliverance to him; And the Cattell which were taken in *Withernam*, did remain with the Sheriff, untill it appeared that the Plaintiff had his Beasts, 43 E:3. 26. Rep. 31.

In a Replevin, the Defendant claimed the Plaintiff for his Villain as regardant to a Mannor in his Custody, by the Grant of the King: And he did not find sureties that he should not distrain, for Bond-service pending the plea, 13 H:4. Surety 12. 13 H:7. 17.

In a *Homine Replegiando*, they were at issue, if free, or not free: And the Plaintiff finding sureties that he would deliver his body and goods, if he were found Villain, had a Writ to have his goods, 5 H: 7. 3. *Gager Deliverance* 11. is contrary of the goods. But for the body each shall give security to the other in an Action upon the case, 13 H: 7. 17.

In a *Replevin*, the Plaintiff declared that the Defendant did yet detain, &c. The Avowant did Gage Deliverance, and the Plaintiff did not find Sureties in Court to return, &c. but before the Sheriff, but of Pots and Pans: after which the Defendant made Deliverance in Court, the Plaintiff did find sureties in Court, M. 5 H 7. 9.

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IX. *The Count in second Deliverance, and where he shall declare of the first, whereof the second taking.*

In a second Deliverance, the Plaintiff declared of a taking in another place, then he had declared before, and good; but the other might aver the taking where he first declared, 17 E: 2. Rep: 22.

So it was said, he may declare of another place, and of another taking, 16 E: 3. *Aide* 131. and 6 E: 3. *Monstrans* &c. 22. But *Herle* there saith, That this Writ is warranted out of the Roll, and not from the Originall, and it ought to agree with the Roll. But *Martin* and others said, If the Plaintiff be Non-suit after Declaration, he shall not vary from the place, day, or number, &c. M: 3 H: 6 9. Count 3. 12 H. 7. 6: &c. If there be not Estoppel against Estoppel, as a Count in one place, and the Defendant doth avow in another, &c. 26 H: 8. 6. He may well demand money, this in a second Deliverance, (s) those, the taking of which, the Defendant hath avowed in a *Replevin*: And if a Bullock taken be now an Oxe, he may vary in that also.

In *Replegiare* against husband and wife, he had Aide of his wife, and being Non-suit, brought a second Deliverance in his own name, and the name of his wife, 18 E: 2. Rep. 23. *Quere*, for it was doubted if he shall have Aide in this Writ.

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X. *Second Deliverance, or new Replegiare, and of what taking, and where a stranger shall have second Deliverance, West. 2. Cap. 2.*

In a *Replevin*, The Defendant hath a Return adjudged him upon a Non-suit, and hath other Cattell in the stead of those esloined: Now if the Plaintiff bring a second deliverance, it shall be of the first taking, and



of the second he shall have a new Replevin, and shall declare upon it, *M. 13 E:3. Repleader 37. 33 E:3. Avowry 256.*

Upon Non-suit in second Deliverance, return irreplevisable is awarded; and the Plaintiff brings a new Replevin, the Defendant claimed property by that Return, *T. 19 E:2. Rep:23.* but Second Deliverance upon Non-suit in a Replevin. So upon a Non-suit in a Replevin in the Country, duely or not duely removed, he shall have a second Deliverance here, *M:7. E:4. Admeasurement 2. 16 E:3. Aide 131.*

Before the Statute, he should have had a new Replevin out of the Chancery, but afterwards a second Deliverance out of the Rolls of the Justices, *M:6 E:3. Monstrans 22.*

In a Replevin, the Defendant saith, that the property was to one of the two Plaintiffs, and avow upon it, the Writ abated, and he had return: Now the other shall have a new Replevin, not a second Deliverance, because the return was adjudged upon a Writ abated, not upon a Nonsuit. Also the return is not irreplevisable, because upon a Writ abated, not upon Avowry.

XI. *Where a man shall have a speciall Writ to have his Beasts againe, after the Defendant hath Return irreplevisable, Returno habendo, & Sicut alias, where a man shall have, where not.*

**T**He Avowant had a Replevin, and *Returno habendo* issued, the Plaintiff sued a Second Deliverance, upon which the Sheriff returned, that he did not find pledges, nor of *returno habendo*, the Plaintiff prayed a *Sicut alias*, because the other Writ was not served. *Cotesmore*, By the second Deliverance, it appeareth that you are possessed. *Hewster*, Not so, for the Plaintiff useth presently upon return awarded to have a second Deliverance, and upon the view of this Writ the Sheriff would not make return, *3 H:6. Rep. 3.* And note that the *Returno habendo* is not returned.

Replevin against C. and B. C. saith, that he did not take, B. justifies in the right of C. he shall never have return.

XII. *Replevin by Plaint before the Sheriff, where, and how he shall make it, and enter it.*

**I**F my Beasts be taken in the Country, upon complaint unto the Sheriff, and security of return, and to prosecute, he ought to grant me a Replevin presently, and my Plaint shall be entred presently, and the Sheriff may do it in any place, his Hall, Chamber, &c. but day of plea shall be always in the County Court, *4 E:4. Rep:14.*

And

And if the Cattell taken be within a Liberty, and the Bayliff will not make Replevin, the Sheriff may enter the Liberty to do it by the Statute of Marlebridge, cap: 22. And a Replevin may be in one County, where the taking is in another, see Division 2.



# RECAPTION.

## I. Where a man shall have Recaption before Avowry made.

**R**ecaption, and declared that he had distrained the same Beasts for the same cause for which he hath avowed; and it was holden that the Writ lyeth as well before Avowry, as after, and it is allowable, if for the same cause, &c. it may be tryed by the Country, 9 H: 6. 1. Recaption 1. 45 E: 3. 4. 11 H: 6. 8. Recaption 2. 47 E: 3. 7. Recaption 4. But Thorp held, that it doth not lye before Avowry, because the cause of the taking cannot be tryed before. M: 31 E: 3. Recaption 5.

## II. The forme of the Writ, and Count in a Replevin.

**T**he Writ is good which doth suppose the Distress *contra pacem & contra Statutum*, although that the Defendant be Lord: And counted that the Defendant did distrain him such a day, and in such a place, and because he sued a Replevin by Plaint, and that the Defendant did avow in the Country because he held, &c. And that the Plea being removed into the Common Pleas, he did distrain again for the same cause, the same beasts in the same place: And all this is good, 9 H: 6. 1. Recaption 1. M: 31 H: 3. Recaption 5. and he need not shew the cause certain in the Count, 1 L H: 6. 8. Recaption 2.

Recaption against many, one did alledge that before the second taking supposed, they were Non-suit in a Replevin, the other said that no Judgment was given untill the other taking, and before Judgment was not.



not abated by the Non-suit, and after Non-suit the Plaintiff might tender agreement, and have a Writ to make deliverance, *M: 31 E: 3. Recaption 5.*

But *Fitz.* saith, That if the Plea be Non-suit, the Lord may distraine again and no Recaption lyeth, *F. N. B. 72.* Of the Writ abated for Non-suit, see *40 E: 3. 38.*

In a Replevin, they were at issue upon a Plea, in abatement of the Writ, and depending that the Plaintiff brought Recaption, after the Replevin was abated, and therefore the Recaption also abated, *1. E. 1. Recaption 11. F. N. B. 71. 2:*

### III. *Who shal have Recaption, and of what thing, and when it shall be brought.*

**F***Inchden* saith, That a Recaption lyeth as well upon a Distresse for Damage-feasant, as between Lord and Tenant, *Quod alii concesserunt*, *47 E: 3. 7. Recaption 4.*

But *Fitz.* holdeth the contrary, because it cannot be one cause, *71 E.*

But a stranger shall have a Recaption if the Lord of the Land take his Cattell twice for one cause, which he shall not have if one taking were of others Cattell, *34 E: 3. Recaption 12.*

Recaption lyeth upon a Distresse for Suit royall at the Leet, *31 E: 3. Recaption 5.*

Upon a Disclaimer in a Replevin, Recaption was brought, *47 E: 3. 7.* If the Lord distrain the Cattell of his Tenant, and afterwards the beasts of a stranger for the same cause, no Recaptiou lyeth, *10 E: 2. Recaption 10.*

If a man distrain two, and afterwards doth distrain one of them for the same cause, he shall have Recaption, *12 E. 1. Recaption 13.* But if he first distrain the Tenant, and afterwards takes his Cattell, and the Cattell of another man, which they have in Common for the same cause, no Recaption lyeth, because they must joyn in Action, and that they cannot do, by *F. N. B. 72 E.*

The Lord shall have Recaption of the beasts of his Villain which are distrained again, if he himself had sued a Replevin before, *19 E. 3. Recaption 9. and Rep: 32.* And there Issue was taken upon the property of the Cattell, if they were the Cattell of a stranger: And yet Recaption lyeth, although that other beasts are taken, and not the same which were first taken by Distresse, *F. N. B. 72 G.*

## IV. Barr in Recaption, and what thing he shall recover.

In recaption, the Defendant saith, That the first taking was for homage, and that this is for Rent, and a good barr, and that nothing is behind, will not maintain the Action, 45 E.2.4. *Recaption 3.*

So if he saith, That this taking was for rent due at another day, and it is not materiall, although he cannot maintain the cause sufficient for a distress, so as hee maintain the taking for another cause, &c. and in this Writ the Plaintiff shall recover damages for the contempt, not for the taking, &c. 47 E.3.7.

In a recaption, the Defendant shall not make avowry, nor shall have Return, but shall only excuse himself of the contempt, and although the plaintiff hath disclaimed or pleaded, out of his fee in a Replevin, yet in a recaption he shall be driven to this issue, if hee took the cartell for the same cause &c. for out of his fee is no plea in this Writ, although the Lord do justifie for rent, &c. 47 E.3.9. vi. 8 R.2. *Recaption 8.*

Where the Lord justifies for another cause, as for beasts taken out of the possession of the Plaintiffs Villeines, hee ought alwayes to traverse, without that, that he took them for the same cause, and the Plaintiff shall not be put to answer to the second cause, but shall maintain that it was for the same cause M 31 E.3. *Recaption 5.*

If pendant the issue upon, out of his fee pleaded in Replevin, another day do incur, it seems that in recaption the Lord cannot justifie for another cause, because it shall be yet intended out of his fee P. 18 R 2. *Recaption 8.* But see 47 E 3 7. seems to be contrary, but if the issue had depended upon this, (s) nothing behind, or levied by distress had been pleaded, and another day had incurred, he might distrain for it, by *Fitzherbert N. 2. 71. M.*

Where 12 d. was due pending a Replevin, the Lord did distrain again, and in Recaption, said, that the first distress was but for 4d. and now hee distrained for the residue, and he was forced to the issue, if the first distress was for the whole 12 d. P 28 E 3 3 *Recaption 6.* See that this seems to be contrary to 18 R 2. and also to *Fitzh. N. B.* for here also the issue first was upon, out of his fee.

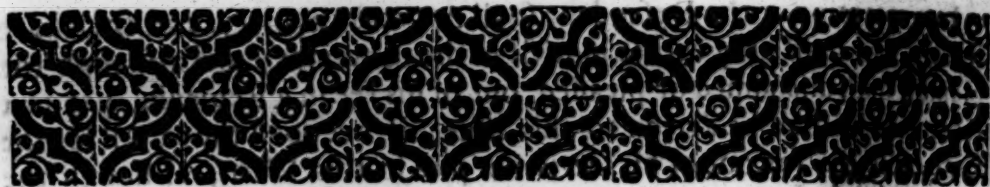
The Defendant being convicted before the Sheriff in the Country in a Recaption, shall be amerced and pay damages, but being convict before the Justices, he shall be fined and pay damages. *F. N. B. 73. D.* so a Recaption lyeth upon a plaint in the Country, not removed, and shall be directed to the Sheriff by *Fitzh. N. B. 73.*



## V. Recaption upon Conusance granted.

**I**N a Recaption, the Bayliff did demand conusance, and failed to do right, and because there is no Writ for the Lord to remove the plea, he distrained again, and the Tenant sued recaption in the Kings Bench; reciting the whole matter, and it was good, *Quare* for it was not purchased *Pendente placito*, &c. 14 E. 3. recaption 7.

*Fitzherbert* saith, That the Recaption lyeth, because the Lord might have removed the Plea by Resummons, *Folio* 72. f.



## W I T H E R N A M.

I. Where Withernam shall be awarded and where not, and when it shall be awarded.

**W**ithernam shall not be awarded upon return, that the beasts are esloined at the *Pluries*, &c. if the Defendant doth appear at the return, and his appearance is recorded, 7 E. 4 15. *Withernam* 1.

If the Defendant sueth *Returmo habendo*, upon a Nonsuit of the Plaintiff, and it is returned that the Cattell are esloined, now a *Withernam* shall not issue forth untill a *Scire facias* be against the pledges, 7 R. 2. *Withernam* 11.

If a man recover dama. in Assise, or in a writ of right in ancient demesne in the nature of an assise, and the Bayliffs take the Beasts of the Defendant and selleth them, and payeth the plaintiff, and the Defendant sueth a Replevin, upon return that the Cattell are esloined, he shall have *Withernam*, which hee should not have had if the Sheriff had returned the speciall matter, 7 H 4 *Gage Deliverance* 1.

If the *Withernam* be not executed, and the Defendant appeareth, and pleadeth, that he did not take the cattell, now the Plaintiff shall not have *Withernam*, 17 E. 3. 1. nor shall he gage deliverance.

In Avowry, the Plaintiff prayeth, that the Defendant may gage deliverance,

rance, the Defendant saith, that the Cattell are dead, now the Plaintiff shall not have *Withernam*, but it is to be enquired, through whose default the cattell dyed, 19 E.3. *Withernam* 8.

*I I: Against whom Withernam lyeth:*

**V** *Withernam* erroneously awarded against the Defendant, where he appeared, and before *Supersedeas*, the Sheriff had delivered the beasts to the Plaintiff, and was returned by the Sheriff, and that also hee would have taken them from the Plaintiff, and have delivered them back to the Defendant according to the *Supersedeas*, and that the Plaintiff had returned the beasts, and the Defendant appeared and pleaded that he did undertake the cattell &c. and had a *VWithernam* against the Plaintiff, if he would not gage deliverance, 73 dw. 4. 15. 26 Hen: 6 Gage Deliverance, 15.

In a Replevin. Issue was taken upon the property, and because the Plaintiff had beasts of the Defendants in *VWithernam*, he gaged deliverance and the Defendant had a Writ to have the Cattell delivered to him, and the Sheriff returned that the cattell were esloined, and *VWithernam* awarded, and because he had nothing, a *Capias* and *Exigent* issued against the plaintiff, M: 11 H: 4: *Proces* 124.

Return is awarded upon return, that the Cattell are esloined, the Plaintiff shall have a *Scire facias* against the Pledges, or *Withernam* against the party, and *VWithernam* lyeth at the common Law, against the Defendant H: 5: *Proces* 125.

*III VWhere the Cattell taken in Withernam, shall be delivered to the Plaintiff, where not.*

**U**pon *Withernam*, the Sheriff shall keep the cattell, and shall not deliver them to the Plaintiff, and when the Defendant hath delivered back the first cattell which he took, he shall have his cattell again, M: 2 H: 4: 10: But in the Kings Bench the course is to deliver them to the plaintiff.

A *Withernam* was not delivered to the plaintiff, because he was not in the Country, and so returned:

Now the Plaintiff prayed a Writ to have *Withernam* delivered unto him, he shall not have it, if the Defendant appear, and be ready to gage deliverance, but the party had a Writ to have the cattell which were first taken, and if he cannot have them, then he shall have delivery of the *VWithernam*, and a Writ for damages for the delay, and in the mean time,

X x x x

the



the cattell shall remain with the Sheriff, or Coroner, who served the Writ  
43 E:3:26. replevin 31.

IV. *Of what thing a man shall have Withernam.*

**C***apias* in *Withernam*, against a Peer of the Realm, upon a return that the Cattell were esloined, and now issue upon villeinage, and the plaintiff delivered to the Marshall, and now he prayed a *Capias* against some of the Defendants who did not appear, and could not have it, because delivered 11 H.4. *Withernam* 4, But he had a *Pone per vadios*, and upon default of the Defendant, it not being found, the Plaintiff had his Cattell in *VVithernam*, and see there, that the Defendant shall have *VVithernam*, of the Plaintiffs cattell.

Diverse beasts were taken in *Withernam*, whereas the Replevin was but of one beast, 22 H:6. *Withernam* 7.

If a man sueth a Replevin of pots and pans, *VVithernam* shall be of goods to the value, 31 E.3. *VVithernam* 9.

The Sheriff in the Country may award *Withernam*, to take to the value, not to the number &c, 21 H:6. *VVithernam* 10.

V. *Where Withernam shalbe awarded to the Sherifff.*

**T**he Sheriff may well award *VVithernam*, upon a plaint before him in the Country, 9 E.4 *VVithernam* 2. and that upon return of his Bayliff that the Cattell are esloined, but he ought first to enquire of the enquest, if the Return be true; but the process in this *VVithernam*, is *Alias* and *Pluries*, & *sic infinitum*, and no process of Outlawry lyeth, as it doth in the Kings Bench, *Fitzherberts Natura Brevium* 7421 H.6: *Gage deliverance* 13.

VI. *Processe in Withernam.*

**W***ithernam* upon return, the Cattell are esloined, and upon that return, that *Non habet averia*, the Plaintiff may have *Sicut alias de averijs & cattallis*, M.28.Ed.3: *VVithernam* 6. See *Withernam* 4. If the Sheriff send to the Bayliff of the Franchise who doth not make deliverance, but that returned, *VVithernam* shall issue forth with *Non omittas*, by F.N.B. 74.

And *VVithernam* lyeth against the Plaintiff for esloining the Cattell of

of the Defendant, with distress to answer unto the King for the contempt  
& to the party his damages; and although he wil be non-suit in the Reple-  
vin, yet the Defendant shal declare against him upon the Distress, P. 26 H  
6. Gage Deliverance 15.



## PROPRIETATE PROBANDA.

*1. Upon Property claimed, in what Court or place the Proprietate Probanda shall issue, and where it shalbe returned.*

**I**n a Replevin the Defendant claimeth property before the Sheriff, no deliverance shall be, and the property shall not be tried without a Writ, and the Writ, *De proprietate probanda* doth not lye upon a Plaint, for which the Plaintiff did remove the plaint by *recordare*, and upon that issued forth *Proprietate probanda*, and it was found for the Defendant, and the Plaintiff counted upon the *recordare*, 30 E. 3. replev. 36: and see the plaint abated upon property claimed, 31 E. 3: replegiare 35.

Replevin in the Kings Bench, the Sheriff returned, the property was claimed, and a *Proprietate probanda* awarded, 1 E. 4. repl. 12. But see that Property claimed in the Court shall be tryed by issue without a Writ, 5 E 3. repl. 41. 21 E 4 76: *recordare* shall be good upon a Plaint abated before by *Fitzh:* 71.

Upon property claimed before the Sheriff, his power is ended, be it by plaint or Writ but if by Writ he shall have *Alias*, *Pluries*, *vel causam*, &c. and upon return that the party claimes property, *Proprietate probanda* shall issue forth returnable in the Chancery, or the Kings Bench, &c. and 2 Ed: 3: *Proprietate probanda*, issued, where the parties did appear in Court, but it seems the property shall be tryed by issue there, and the Writ shall not issue forth, but return of the Sheriff, 30 E. 3. *Proprietate probanda* 3.

*11: Where Tryal shall be of the property at the time of the taking, where at the time of the Claime, where after the taking.*

**I**n a Replevin against three, the Sheriff did return, that two did distrain &c. as Bayliffs for the Kings Debt, and sold the Cattell to the third, so  
X x x x 2 he



*Proprietate probanda.*

he claimed property. *Markham*, *Proprietate probanda* shall issue forth, although the property did accrue after, for the Sheriff cannot return the speciall matter, but generally, that he claimeth property, as he shall not return, that the cattell are taken for an execution of a recovery &c. *Quere, Fortescue*, If I take my neighbours cattell, now upon property claimed and found in *Proprietate probanda*, the cattell shall be delivered unto him, &c. *M. 31 H. 6. Proprietate probanda, 4* And it is sayd, That a man shall not claim property if he had not property at the time of the distraining of the cattell, *M. 2. E. 2. Avowry 178*.

*III. What shall be done upon property claimed by the plaintiff, or Defendant, and where the plaintiff shall have trespass, although the property be found against him.*

**I**T being found for the Defendant in a *proprietate probanda*, yet the Plaintiff shall have Trespass, but if he bring a new Replegiare, the Sheriff shall not make deliverance, &c. but if property be found for the Defendant upon issue in the common pleas, the plaintiff afterwards shall not have Trespass *H. 31 E. 3. Proprietate probanda 3. M. 31 H. 6. proprietate probanda 4.*

And if upon a Writ of *proprietate probanda* it be found for the Defendant, the plaintiff may count against the Defendant, and hee shall be received to aver the property to be to him, and not the Defendant, *30 Ed. 3. Repleg. 36.* and whether the property be found for the one, or for the other, and *Hulls* sayd if it be found for the Plaintiff, the Defendant shall be fined, *11 H. 4. C. Litt. 145. acc.*

*IV. Who may claime property, and sue Proprietate probanda, and where the Defendant shall be attached to answer to the King and the party.*

**I**F the servant claimeth property for his Master, a Writ of *proprietate probanda* lyeth, *11 H. 4. 4. Proprietate probanda 1.*

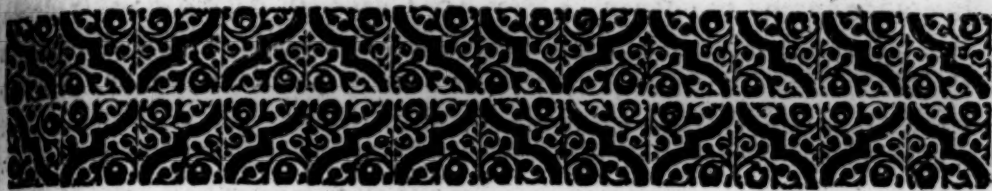
But it was adjudged that the Defendant cannot claim property by his bailiff, and the Sheriff shall be amerced for such return, *17 E. 2 proprietate probanda 6.* and one Defendant may claim property, *31 H. 6 proprietate probanda 6.*

See *5 E. 3. 38. 11 H. 4. 4. 17 E. 2: proprietate probanda 6. C. Litt. 145.* A man cannot claim property in goods by his Bayliff, or servant, because if the claim be false, he shall be fined for his contempt, which the Lord cannot be, if he do not claim them himself.

A stranger to the Writ, shall never claim property, nor shall ever have a writ *De proprietate probanda*, but the Sheriff ought to deliver the cattell notwithstanding his claim, *14 H. 4. 25. proprietate probanda 2.*

Upon

Upon property found for the Plaintiff, the Sheriff shall make deliverance, and shall attach the Defendant to answer as well to the King for the contempt, as to the party, *M. 30 E. 3. 30. proprietate probanda 3.*



## Gage Deliverance.

1. *Where the Plaintiff shall Gage Deliverance of the Withernam taken, and where a Writ shall issue forth to make Deliverance, without Gager.*

**W**ithernam is delivered to the Plaintiff, and the Defendant attached, The Plaintiff declared, and the Defendant did avow the selling of the Distresse, as Bayliff of Ancient Demesne, for Damages recovered in a Writ of Right there by T. against the Plaintiff, the Plaintiff said, that the Land is Frank Fee, and there was a Demurrer upon it, because he had appeared and pleaded there, &c. And it was Frank Fee by a Fine levied at the Common Law, whereof the Defendant being Bayliff had no notice, for that cause he was excused, and had a Writ to the Sheriff to make deliverance, but the Plaintiff shall not gage deliverance here, &c. But note, *Gascoigne* saith, If the first taking was not lawfull, and the Defendant hath sold the Cattell, that the Plaintiff cannot have them again, that he shall keep the *Withernam* for ever, and shall not recover the whole in Damages, but for the taking and detaining, &c. *Quere*, for the Defendant had a Writ, &c. and pleaded that the land was not comprised within the Fine, *M. 7 H. 4. 28. Gage Deliverance 1.*

In a Replevin after *Withernam* delivered to the Plaintiff, they were at issue upon property claimed by the Defendant, and the answer of the Plaintiff. Now it was holden that the Defendant should have a Writ to make Deliverance of the *Withernam*, without Gager Deliverance of the first taking, because property claimed: So if the Defendant plead, that he did not take the Cattell, and it is found against him, the Plaintiff shall recover all in damages, *30 E. 3. 9. 11 H. 4. Procer 121*, there the Plaintiff did gage deliverance.

The



## Gage Deliverance.

The Defendant doth avow, the Plaintiff prayeth that he may find sureties to deliver the Cattell, the Defendant saith, that the Plaintiff is seised of his Beasts in *Withernam*, by a Plaint in the County: And this he may say, although the *Withernam* be returned, &c. and the one shall have deliverance against the other, 4 E:3. 40. Gager 10. M: 20 E: 2. Gager 29. But where deliverance of the *Withernam* is not made to the Plaintiff, if the Defendant come and prayeth that he may gage deliverance, the Plaintiff shall have a Writ to make deliverance of the first beasts taken, and shall find sureties to make return, if, &c. *vi. Withernam*, 3 M: 43 E: 3. Rep. 32. And see there, that deliverance of the *Withernam* shall not be to the Defendants, untill the Plaintiffs writ be returned.

The Defendant did avow, and shewed that by Plaint before the Sheriff, the Sheriff had his beasts in *Withernam*, and prayed deliverance, &c. The Plaintiff said, that he ought not to have untill his beasts were delivered: And because it appeared by the Plaintiffs Declaration in the County that he had delivery, &c. he shall gage deliverance of the *Withernam*, although it was said, that nothing that was done in the County is of Record here. But *Newton* conceived that that might be shewed by the suggestion of the party, P: 21 H: 6. Gager Deliverance 13.

The Defendant prayeth deliverance of the *Withernam*, the Plaintiff may well joyn issue, that he did not take them, 20 E: 2. Gager 29. which is not Law, but a Writ shall issue forth to make deliverance, *Si constare poterit*, P: 26 H: 6. Gager 15. 40 E: 3. 40.

11. *Where the Plaintiff shall Gage Deliverance to the Defendant first, and where the Defendant to him, &c.*

**I**T seems, where the Plaintiff hath the beasts of the Defendant in *Withernam*, and the Defendant doth appear and avow, now he shall not gage deliverance of the Cattell first taken, untill the Plaintiff hath gaged deliverance of the *Withernam*, 4 E: 3. 40. acc. vi. 3 Eliz. Dyer 169. 11 Eliz. Dy. 280. 22 H 6. 20 5 H. 7. 5.

111. *Where the Defendants shal gage Deliverance in a Replevin, and what shall be a good Counter-plea for him of the Gager, &c.*

**I**N a Replevin the Defendant doth avow, the Plaintiff prayeth that he Gage Deliverance, and that he shall do, notwithstanding that he alledgeth that he hath made Deliverance in the Country, &c. 7 R. 2. Gager, &c. 2.

So if he alledge it made by Writ, but the Plaintiff shall have a Writ to make deliverance, if, &c. *M.15 E.3 Gager 4.25 E.3. Gager 8.*

So if he say generally that the Plaintiff is seised, &c. *3 H.6.15. Gager 11.*

And if upon the Writ to make deliverance, the Sheriff return that they are essoined, a *Capias* shall issue and not *Withernam*, and all shall be recovered in damages, *22 H.6. Gager 14.*

But see where the Defendant saith, that deliverance is made, &c. the Plaintiff may shew how that he had deliverance in the Country by plaint, but that afterwards because he was Non-suit the Defendant had return, &c. And the Defendant may aver, did make return unto him. So note, no Avowry where the Sheriff doth not deliver the beasts to the Defendant upon a return awarded, *P.25 E.3. Gager 8.*

Note, the Defendant shall gage deliverance, although the Plaintiff grant that he distrain and retain against Gages, & Pledges, untill he be satisfied, &c. *31 E.3. Gager 5.*

And note, that all the cases before are to be intended when the Plaintiff declares, upon this, that he doth yet detain, and the Defendant doth avow, &c. *4 E.3.40. Gager 10.*

If the defendant claim property, that it was Corn, whereof a Replevin is sued; If the Defendant shew that the Plaintiff did surrender his land to him sowed with Corn, he shall not gage deliverance: And if it be found against him, the Plaintiff shall recover all in damages, *30 E.3.9. Gager, &c.* And yet there it was said, that one who avowed for a Heriot, claiming property, was driven to gage deliverance, and that was *21 E.3. Gager 7.* But see the contrary of the Heriot, where he avowed by execution of a *Fieri facias*: Or if he alledge the property in another, and not in the Plaintiff; or if he saith, that he took the Cattell in another place, *quere*, what, &c. by *Brian, H.21 E.4. Gager 19.* But it is adjudged, that he shall gage deliverance, where he saith, that he took them in another place then *30 E.3.1 H.7.21.* And therefore if he do alledge the taking in another place, which is ancient demesne, he shall gage deliverance, yet if he had said, that the place where, &c. is ancient demesne, he shall not gage deliverance, *30 E.3.10 H.4. Gager 23.11 H.4.2.*

The plaintiff prayeth deliverance, the defendant saith, that he put them into the pound, and that they are dead in the Plaintiffs default, this is a good plea, by *Martin, 4 H.6.14. Gager 12.* And at issue in whose default they died: But it is no plea for the Plaintiff to say, that the defendant hath carried them unto a place unknown, if they were in any open pound within the County, *5 H.7.9.* And by the same Issue taken, it shall be holden confessed that they are dead. And it shall be no Issue to say generally that they are dead, or alive; but the Plaintiff shall have a Writ to make deliverance, *Si constare poterit*, &c. and upon return that they are dead, the Plaintiff may aver the contrary, *30 H.6.2 Gager 16. 3 H.6.15. Gager 11.22 E.4. Gager 20.* And there for parcell he shall gage deliverance, and for the rest, that they were dead: and holden that the Writ shall



## Gage Deliverance.

shall be the like for the first, and if &c. for the rest, &c. the Plaintiff pray-  
ed that the defendant might gage deliverance, and he said that the plain-  
tiff had his beasts in *Withernam*, and they were at issue upon that, *M. 2*  
*E. 2. Gager 29*. But the contrary is holden, and that a Writ to make de-  
liverance shall issue forth, with *si constare poterit*, that the Plaintiff hath  
the beasts of the other in *Withernam*, to deliver them to the Defendant;  
and upon that returned, that the Plaintiff hath esloined them, *Withernam*  
shall issue forth, *P. 26 H. 6. Gager 15*.

Replevin of a taking in the Tenure of *B*. The Defendant saith, that *B*.  
is neither Town nor Hamlet, he shall not gage deliverance, because he  
may traverse the taking afterwards &c. *4 E. 3. 13. Gager 9*.

### I V. Where Gager shall be in Recaption, Homine Replegiando, where in Trespasse, where in Second Deliverance, &c.

**I**N a Recaption, the Defendant doth avow for cause, &c. and at issue;  
The Plaintiff prayeth that he may gage deliverance, and adjudged that  
he shall, *47 E. 3. 22. Gager 3*.

In a *Homine Replegiando*, at issue, if Frank, &c. and upon a suggestion  
of the Plaintiff, that the Defendant had taken his Goods, a Writ issued  
forth to make deliverance of the Goods to the Plaintiff, *6 E. 4. 8. Gager*  
*17. 5 H. 7. 3. Gager 21*.

In a *Homine Replegiando*, the Defendant after such Avowry (that his  
Villain) did gage deliverance of the body, and a Writ awarded to deli-  
ver it, if, &c. although it may be that the Defendant is not possessed of the  
body, and if it be so, *nulla sequatur poena*, *P. 12 E. 4. 4. Gager 18*.

And the forme of Gager deliverance of the Goods of the Villain, is to  
have a Bill that such and such are his Goods, and a Writ for to deliver  
them, *5 H. 7. 3. Gager 21*.

See that in Trespasse the Defendant claimed the Plaintiff to be his Vil-  
lain, the Plaintiff found surety to prosecute, and hanging the plea, the  
Defendant took all the Cattell and Goods of the Plaintiff, and yet for that  
was not fined, *P. 9 H. 5. Fines 39*. And note, it is a good return in a *Ho-*  
*mine replegiando*, that the Defendant doth claim him as his Villain, so as  
he could not make deliverance, and therefore the Plaintiff found sureties  
by his friends to be here, and had a Writ to make deliverance, *M. 8 H. 4.*  
*return of the Sheriff 47*.

Trespasse for taking of his Plow-Cattell, the Defendant saith, that he  
holdeth of him, and he could not find other Distresse, and upon that they  
were at issue, and the opinion of the Court was, that the Defendant  
should gage deliverance, although it was in Trespasse, *5 E. 3. 56. Ga-*  
*ger 28*.

V. A Wri

V. *A Writ to make Deliverance for the Plaintiff, and the same Writ for the Defendant, and Proces upon it.*

**T**He Defendant gaged in Court, and a Writ issued to make deliverance to the Plaintiff, 7 R. 2. *Gager* 2.

And if he do alledge delivery made before the Writ, it seems the Writ shall be then conditionall, *M. 15 E. 3. Gager* 3. And if the Sherif return that the beasts are esloined, a *Capias* shall issue against the Defendant, and not *Withernam*, 22 H. 6. 41. and see 26 H. 6. *Gager* 15. Where the Proces shall be with an if, &c. Where the Defendant shall have a Writ to make deliverance of the *Withernam* taken by the plaintiff, see 1 I H. 4. *Proces* 121.

VI. *What persons shall gage deliverance for another.*

**T**He Attorney shall gage deliverance for his Client, 6 E. 4. 8. *Attorney* 22. and 1 H. 7. 11 and 15 E. 3. *Gager* 4.

The Kings Baylif who distrains for the Kings debt, shall gage deliverance as for another person, by *Finewx* and *Read*; yet *Frowike* saith, That the bookes are contrary, *Sec hoc negatur*, 16 H. 7. *Gager* 30. 15 H. 7. 11. but 27 H. 6. *Gager* 27. agrees with *Frowik*, and that he may sell the *Distresse*.

He who makes Conusance as Baylif of the Husband and Wife, shall gage deliverance, 4 H. 6. 13. *Gager* 12.

VII. *Gager of another thing which was not taken at the first.*

**T**He plaintiff prayeth that the Defendant may gage deliverance, who said, that the plaintiff is seised, &c. the plaintiff shewed that he had deliverance in the County, but because he was Non-suit after the Defendant had return, and because the Sherif found not the beasts, he took the price of them, and delivered the same to the defendant, and they were at issue, The did deliver the price of the beasts, 25 E. 3. *Gager* 8.

And in a *Homine replegiando*, the defendant did gage deliverance of the goods of the Villain, 6 E. 4. 8. *Gager* 17.

Y y y y

VIII. *Paine*



## Gage Deliverance.

VIII. Paine for not Gager where he ought, and where for not delivering the Cattell.

**T**He Defendant was imprisoned, because he would not gage deliverance where he ought to do it, 31 E. 3. Gager 5. And if upon a Writ awarded, the defendant doth esloin them, a *Capias* shall issue forth, and all shall be recovered in damages, 22 H. 6. Gager 14. and 1 H. 7. 11. And where the plaintiff prayeth deliverance, and the defendant saith, that he hath his beasts in *Withernam*, a Writ shall issue forth to make deliverance to the plaintiff, and if he have beasts in *Withernam* to deliver them to the defendant: And if the plaintiff esloin the beasts, a *Withernam* shall issue of his beasts, and he shall be distrained to answer to the King for the contempt, and the party his damages, and that although the plaintiff would not be Non-suit in the Replevin, 26 H. 6. Gager 15. vi. F. N. B. 72. ac.

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IX. Where Gager shall not be untill Avowry or Replication to the Avowry made.

**I**N Avowry for a Rent charge, the defendant shall not gage deliverance untill the plaintiff hath answered to the Avowry, for which cause he prayed in aide, which was granted, and then the defendant did gage deliverance, 22 H. 6. 41. Gager 14. And before Avowry a man shall not gage deliverance, for he may claim property before issue, or demurrer, by *Wilby*: And Gager of deliverance is to find sureties to make deliverance, Hil. 25 E. 3. Gager 25.

The defendant saith, that he took the Cattell at another place damage-feasant: Now the plaintiff ought to maintain his Writ, before that the defendant do gage deliverance; but he gaged there before issue joyned, or demurrer, 1 H. 7. 11. and 21.



# WASTE.

I. Where it lieth against Guardian in Socage, during the Nonage of the Heir, n here after.

**N**Ote, the Heir within age did recover against his Mother in Wast, Guardian in Socage, *Et quoad damna remanebit*, 2 E.2. *Wast* 1. 14 E.3. *Wast* 107.

And see 16 E.3. *Wast* 100. where the Mother did alledge, that she was Tenant in dower of the third part &c. and it was found, that she held as Guardian by Nurture, the day of the Writ brought, and that hanging the Writ, a stranger did assign dower unto her, and the opinion of the Court was, that the Writ should not abate by that mean assignment, but the opinion of the Justices there was, that Waste doth not lie against Guardian in Socage, but Trespasse upon the Case, or accompt at full age of the Heir, but *Kells* saith, that accompt doth not lie of houses pulled down.

Guardian in Socage shall not be punished, if not for voluntary Wast, for if he suffer a house to fall, he shall not account for it, by *Priseit*, 19 H.6. *Wast* 9. *Quere*, if Wast or accompt lieth.

Guardian in Socage shall not answer for Wast done by a stranger, by *Fitzherbert N.B.* 59. *Quere*, if *Magna Charta*, cap.5. extend to Guardian in Socage: See *Fitz.N.B.* 59. That the Heir within age shall have Wast against Guardian in Socage.

11. Wast by banishment of the people, and Bar in it.

**W**AST against Tenant in dower of the Exile of the people &c. and the Plaintiff recovered accordingly, yet the Writ is given by the Statute, and there is no mention made of banishment or exilement &c. 3 E.2. *Wast* 2. and therewith agrees 11 E.2. *Wast* 113. and there it said, that

Y y y y 2



that it is by the Statute *de Consimili casu*, but *Fitz. N. B. 56. H.* It seems to be, that it is given by the Statute of *Marlebridge*, cap. 23. see 7 E. 3. 34.

The vexing of the Tenants is not waste, if they do not depart, and leave their Tenements, 17 E. 2. *Wast* 118. 2 H. 6. 11. *F. N. B. 55. 6.* agrees of Villains.

And the impoverishing of the Villains by Taxes and Tallage, is Waste, 15 H. 3. *Wast* 131. and 16 H. 3. *Wast* 136. and 16 H. 7.

And where such Waste is assigned, no Waste is a good issue &c. 15 H. 3 *Wast* 131.

### III. Waste against the Committee of the King, during Nonage, where after, and the Bar in it.

29 H. Dyrr 25.  
acc.  
C. 2. part instit.  
13 a. F. N. B.  
59 acc.

**D**uring the Nonage, the King shall take advantage against the Committee who doth Waste, according to *Magna Charta*, but if the heir be of full age, he himself shall have the Action, &c. 3 E. 2. *Wast* 3. and this is to be understood where the King doth not take amends before, for which the Defendant said, that after the Lease of the King he did no Waste &c. 7 E. 3. 12. 43 E. 3. 31. *F. N. B. 59. E.*

It was presented for the King, that the Committee &c. had done Waste by cutting down Trees, but if they fell down by Wind, it shall be a good Bar, if they were carried away by a stranger, for the Heir shall have Trespasse against the stranger, also if the Guardian hath burnt the Trees, it is no Waste, also if he pull down a new house, which never was covered, it is not Waste, by *Knivet*, 40 Ass. 22. *Wast* 24. See that upon such Presentment a Writ was awarded to inquire of the Waste, 20 H. 3. *Wast* 138. to certify in the Chancery, *F. N. B. 596.* and it seems upon such a Writ, the King shall have a *Scire facias* &c. 15 H. 7. 6.

### IV. Waste against Tenant in Dower, or against Tenant by the Courtesie, and the Bar in it.

**T**HE Reversion of Tenant in Dower was granted unto the Husband and wife, and the heirs of the Husband, they brought Waste, supposing the disinherison of them, and the Writ good, H. 3. E. 2. *Wast* 4. The action lieth against him for Waste done by the Lessee of his estate, 11 H. 4. Tenant in Dower leaseth her estate unto the heir, and T. the heir being within age, and doth not take the profits, and at his full age disagrees, and brings Waste against Tenant in Dower for waste done by T: and good, but if the heir also had taken the profits, it had been a good Bar, that before

fore &c. no VVaste &c. 30 E. 16. *Waste* 26.  
 VVast by the heir against Tenant by the Courtesie, because he suffered the water of the Sea to drown the Land, for not repairing the Sewer, 20 H. 6. 1.

Three Coparceners assign Dower to their Mother, who commits wast, the one dieth, the 2 brought wast, and well, but they shall not recover the whole in damages, 11 E. 3. *Waste* 115.

Note, that Tenant in Dower, after she hath lost a VWood in VVast, yet she shall have house-boot &c. at the View of the Plaintiff in the same wood, see, this was before the Statute, 4 H. 3. *Waste* 129.

Tenant in Dower shall not be punished for wast done by her second husband, who is now dead, 15 H. 3. *Waste* 133. also it is a good Bar, that the second husband did it by the commandement of the King, 7 H. 3. *Waste* 141.

*V. General Bar in an Action of Waste, and what shall be a good Bar, what not.*

**W**Ast against the Committee for the heir at his full age, it is a good Bar to say, that the King hath had amends for the VVast, 3 E. 2. *Waste* 3.

So that the house in which &c. stood upon Posts, without more building, or that it was never covered, for then it is no house, 40 Ass. 22.

VVast against Tenant in Dower, it is no Plea for her to say, that in a *Præcipe* depending against her, she vouched the Plaintiff, who hath entered into the warranty, and is now tenant by the warranty, 3 E. 2. *Waste* 4.

The Grant of an Abbot, that if wast be done, it shall be determined by Neighbours, is no Bar in wast, brought by the Ancestor, 3 E. 2. *Waste* 5.

A Surrender to the Plaintiff with his acceptance, is no Bar in wast, if he do not say, for her, before which was no wast, 8 H. 5. 8. 14 H. 6. 14, acc. by *June*, and 27 H. 6. *Waste* 8. contrary adjudged, 12 R. 2. *Waste* 99. and therewith agrees *Newton*, 19 H. 6. 66. and P. 3. H. 6. *Waste* 25. It is holden a good plea, the Surrender with agreement, and the issue entered accordingly.

If Tenant for life do wast, and alieneth in Fee, and the Lessor entreth, yet he shall have a good action of waste, 45 E. 3. 9. the same Law where he enters for a condition broken after the wast done, 45 E. 3. 9. 32 H. 8. 6. But if he enter without cause upon his Lessee for life, he shall not have wast, 12 H. 4. 6. 5 H. 5. 12. 8 H. 6. 11.

It is a good plea for the Assignee of the Lessee, that after the Lease no wast was done, *Fitz. N. B.* 56. a. and for Guardian of Right, 44 E. 3. 27. So for the Committee of the King, 7 E. 3. 12. *Waste* 15. but for Guardian.



dian in fact it is no plea, 27 E.3. 5. *Wast* 14. 26 E. 3. *Wast* 10.

Wast against the Lessor of his Father, where the Lease was, that it should be lawfull for him to make his profit *meliori modo quo videat sibi expedire*, without contradiction of him or his heirs, yet it is holden that he cannot do Wast; for it shall be intended *melior legali modo* &c. 4 E. 2. *Wast* 11. *vide* 46 E. 3. 17. But see 17 E. 3. 7. *Wast* 101. that a Lease of Land to make his profit, he may dig in a Mine, if there be a Mine and no other profit, and may fell the Ore, and so of a wood by *Wilby* and *Schard*.

Entry into parcell of the Land, wherein he hath assigned wast goes but in Bar of that onely, 7 E. 3. 43. 8 E. 3. 52. *Wast* 16. 46 E. 3. *Wast* 90.

It is a good plea, that the Plaintiff himself was seised, the day of the Writ purchased, and the issue was, that he never after &c. 11 E. 2. *Wast* 114. 4 E. 3. 33.

A woman joint Lessee with her husband shall not be punished for wast done in his life time after his death, 9 E. 3. 42. and 10 E. 3. 17. and the difference is when their Seisin was lawfull; for if it were by Disseisin, she shall be charged &c. 2 H. 4. 3. 42 E. 3. 22. 15 E. 4. 28. 3 E. 3. 46. but living the husband, the action of wast will lie against them both, 17 E. 3. 47. and *Quare*, if in this Case, the husband dieth after Judgment, if Execution shall be sued against the wife, *Fitzb.* abridgeth the saying of *Hill*, that she shall be charged, but if a woman hath a Term or other Lease &c. before the coverture, she shall be charged with the wast of the husband &c. 9 H. 6. 52 E. 1. *Wast* 128.

*Vide* 2 H. 4. 3.  
*Vide* Old Filz.  
N. B. 36. acc.

It was found before the Sheriff, that one defendant did wast, the other not, and the Plaintiff could not have Judgment, but *Sicut aliar* awarded, 6 E. 3. 54. for it ought to be found the wast of them both, for the mischief, that if one hath nothing &c. yet 3 E. 3. 18. and 33 E. 3. *Wast* 6. Judgment was given presently upon such a Verdict, *vide* 14 E. 3. *Return of the Sheriff* 111.

The Lessee of a Mill could not fell and cut timber for to amend the Mill, 4 E. 3. *Wast* 22. also if he cannot cut trees to cover the house, but he may cut trees to repair a house, or to make Carts, 12 E. 3. *Wast* 28 19 E. 3. *Wast* 30. But if the house be burnt by strangers, and not by the Kings enemies, he shall not cut down trees to repair or build it again: Also the Lessee cannot cut down apple-trees to repair the house, if there be sufficient of other Trees, *temp* E. 1. *Wast* 122. and it seems that the Lessee may cut Trees to make Troughs for his cattell to drink in, 33 *Ass.* *Double Plea* 9. and the cutting down of dead wood is not wast, but he shall not cut it to repair a house which is burnt by his servant or a stranger who is not the Kings enemy, 41 E. 3. *Wast* 82. *temp* E. 1. *Wast* 123. and note, that the burning is the wast, and not the cutting of the trees, to repair it, by *Wilby*, 19 E. 3. *Wast* 30. and so is 20 E. 3. *Wast* 32.

7 H. 6. 38. acc.

If a house be burned in the default of the Lessee, and he cuts down Trees to build a new house, *Quare* if the one or the other be wast: it hath been holden that the cutting of the trees is wast, but see 44 E. 3. 44. it is wast in both: VVast

**Wast** of apple-trees. The defendant said, that they fell by the wind, and became dry, for which he took them for fewell, and holden a good plea, 7 H.6.38: also it is a good Bar, that it is seasonable wood &c. 7 H.6.38.

**Wast** found according to the writ, and that hanging the writ, the defendant had repaired it so well as it was before, yet the Plaintiff did recover, and that point of the Verdict as to the Reparation was void, 38 Aff. 2. **Wast** 23.9 H.6.66. 13 H.7. and 15 H.7. acc. but a new house made as good &c. before the action brought, is a good Bar, 20 E.4.18. 21 E.4.39. 13 H.7.20 and 21.

The Guardian shall not have windfalls, 40 Aff. 22: but Lessee for life shall have them, 7 H.6.40: so of a house fallen, 42 E.3.6. and 44 E.3.6. and 44: 29 E.3.42: but if the house be discovered by tempest, this is wast, if it be not covered again within convenient time, 12 H.4.6.

If the Lessee doth repair a house which was so ruinous, that he was not bound to repair it, it is not materiall of what length or breadth he maketh it, but where he repaireth a house which is taken down by himself &c. so as he is bound to repair it, there it may well come in issue, if it be so much in length and so much in breadth, for if it be not, it is wast, 22 H.6.18. 42 E.3.27: and it shall be so, although he pull down the first with the Plaintiffs consent, and makes a new house as good, and as profitable, by *Newton* 22 H.6.18:

If the Lessee pulleth down a ruinous house, he ought to build a new house of the same length and breadth, so was it adjudged, 8 *Jacobi*, in *Twish's Case*, but see 22 H.6. by *Newton*, if the house fall by tempest or otherwise, and not the default of the Lessee, it is otherwise.

Ruinous at the time of the Lease, is a good Bar, 7 H.6.40. 14 H.4. acc. but if he will rebuild it, he may well cut down trees to do it, and although it fell in the time of the ancestor of the Plaintiff, if it be a necessary house, and necessarinesse of it shall come in Issue, 11 H.4.31. if it becometh ruinous after the Lease, it is wast, although the house do not fall, 34 E.3. wast 145.

It is a good Bar for Lessee for life, that a stranger had the Land in execution upon a Statute Merchant of the Plaintiff, before which there was no Wast, 19 E.3. **Wast** 31.

Note, that cutting down of Apple-trees which fall by wind, if yet they will bear fruit, is wast, 44 E.3.44. *Vide 7 H.6. 3. 9. before, not if they fall by wind and become dry.*

**Wast**, declaring that *J.* did enfeof the Tenant, and *A.* his wife, mother of the Plaintiff for their lives, and to the Heirs of *A.* who is dead, the Tenant said, that he in the life of *A.* did alien to a stranger in Fee. *A.* died, and he took back for life: So the Plaintiff hath nothing in Reversion, and holden a good plea; for all is pursuant to the generall Issue, that he hath nothing in the Reversion, 8 H.6.13. *Martin* saith there, that nothing in the Reversion generally is no plea, where the Plaintiff declares of a Lease made by himself or by his ancestor, otherwise it is where he



he brings the Action as Assignee &c. 8 H.6.15. See contrary to this (s) of the generall plea, 46 E.3.10. but 30 H.6.9.b. agrees with 9 H.6.15.

A Lease *Absque impetitione vasti*, *Proviso*, that he shall not do wast in *domibus voluntariè*, now he shall be punished for no Wast, but in the houses, and there onely when it is voluntary, but if he hath done voluntary wast in the house, he shall be punished for all the rest &c. vide 9 H.6.35.b.

It is holden a good Bar to avoid circuit of action in wast, that the Plaintiff did grant unto him that he should not be punished for wast, 6 E.3.7. 20 H.7.4. by *Tremaile*. But *Finewx* chief Justice contrary there, and 21 H.7.24. if it be by another deed, and with that agrees 9 H.6.35. and 21 H.6.47.

It is a good Plea for the Tenant by the courtesie, that the Mother hath an elder son who is living, which did survive, or a son, whereas the Plaintiff is a daughter. *Quere* if it be good, that she hath another daughter, which is alive, who hath issue, 9 H.6.11. *F.N.B.60.*

The Tenant saith, that he cut trees to re-build the house, which was ruinous in the time of the Ancestor of the Plaintiff, which fell afterwards, and Issue was taken, if it were sufficient &c. in the Plaintiffs time, for then if it falleth through his default &c. it is not lawfull for him to cut timber to build it again, 11 H.4.31.

In wast by the Lord, by escheat of a house, it is a good plea that it was uncovered in the time of the Tenant, and feeble, and that afterwards for weaknesse it fell down &c. the Plaintiff replied that the Tenant took it down and sold it, the Tenant shall averre his saying, without that, that he took it down or sold it, 45 E.3.3. for it is not lawfull to take down a house which is ruinous, 14 H.4.12.

Wast maintained for suffering his Close to lie unclosed, so as the Cattell of others did eat his young sprouts of the trees: So of putting in beasts, or young Bullocks, not of any value, 20 E.3. *Wast* 32.

So of Quick thorn; for this is destruction, although it be not properly Wast: See 9 H.6.43. 46 E.3.17.

*Vide* 11 *fac. in Co.1.B.* in Sir *John Gages* Case, eradicating of white thorn is wast, but not of black thorn, 46 E.3.9 H.6. *acc.* but by Cook Chief Justice, cutting of Quick set-hedges is no wast, but is good husbandry, and they will grow again, but eradicating of them is wast, and so it is of a hedge of black thorn.

It is no bar, that it is seasonable wood &c. if it be above 20 years growth, 7 H.6.40: 10 H.6. *VWast* 42: See of this matter, what shall be said wast. 40 E.3.33: *wast* 67.

The Patron of a Colledge incorporate made Collation to 7 S: by these words, or *1 Dedi &c: tali Collegio &c:* for term of his life, and now in wast brought against him, the Tenant could not have the speciall Plea upon the matter, because it is not a Lease; for a Patron by no means can make a Lease of a thing not in him to that intent, for which he said, that

That he did not lease, &c. and good, 21 H.6.2. yet I may have the special plea, whereby my Disseisor maketh a Lease to me for life, that is granted, because he hath a Freehold, but yet I am remitted.

If the Lessor grants Trees during the term, and he himself cut them down, or commands the Lessee so to do, the same is not waste, but if the Lessor cut them for the Grantee without the commandment of the Lessor, this is waste, 21 H.6.47. And the commandment was averred. See if it ought to be by Deed, as a commandment for to dig gravell, 2 H.7.14. And if the Grant was before the Lease, the commandment of the Grantee should be good: Also if he cutteth them down without commandment, yet he may plead the Title of the Grantee against the Lessee, 11 H.4.31.

The Lessee may well cut down Oakes and Ash for fire-boot, &c. if there be not under-wood, &c. otherwise it seems for sale-boot, 21 H.6.49. 20 H.3. waste 139.

Waste lieth for him in the Remainder in tail against Tenant for life, who hath the Fee in remainder, 41 E.3.23. 42 E.3.19. But he in the remainder in tail after possibility of issue extinct, shall not have waste: And if he hath issue which dieth, hanging the Writ, it shall abate the Writ, 2 H.4.33 H.4.6. F. N. B. 60. *C.5. part. ac 50. E.3. ac. vi. C.11. part 83. Bows case. 11 H.4.14 34 H.6.16.21. 39 E.3 16. ac.*

That he hath nothing, the day of the Writ brought, is no plea for the Defendant in waste, because the Alienation after the Waste done shall not excuse him, 40 E.3.33. 41 E.3.23.

That the house was weak at the time of the Lease, and fell afterwards, is a good bar, 45 E.3.2. 14 H.4.12.

Many things of small value, as one twelve pence, another six pence, &c. make waste, but not one of them by it self, 14 H.4.12. 9 H.6.66. Waste of the value of twenty pence adjudged, was against a Guardian, 34 E.3. 38 E.3.7. a Grange to the value of 40 s. wasted, and yet no waste they say.

Waste of a house, no such house at the time, is no plea, 42 E.3.22: 17 E.3.7. For if the Lessee himself, or a stranger with his assent build it after the Lease, the Lessee ought to maintain it, 42 H.4.6. 17 E.2. waste 118.

But otherwise it is where the Lessor makes a new house after the Lease, without the assent of the Lessee, 49 E.3.1.

Waste doth not lye of that which the Lessee covenants to leave in as good plight, &c. if the house falleth afterwards by tempests, 43 E.3.6. Waste 74. So if it were ruinous at the time, &c. 49 E.3.1. 8 E.4.2. but in both cases the Lessor shall not have Covenant.

Release of the Ancestor with Warranty to Tenant for life, so as he nor his Heirs shall not claim nor demand any right during his life, is no bar to Waste done in the time of the Heir, nor a release of the Heir himself in the life of the Ancestor, but an expresse Grant of the Heir in the life of the Ancestor to the Lessee, that he shall not be impeached of Waste, shall be a good bar against him, &c. 42 E.3.24. Waste 72: 19 H.6.17.

A man reciting that where his Father leased to ? for life, Know, &c.



*me dedisse*, the same lands to the said 7. for life, &c. & *relaxasse omnimod. actiones vasti quas habeo, sen, &c.* and the opinion it seems (by the issue which was taken, that nothing passed by the Deed in Waste.) That if the same doth enure onely as a Release, as if he were Tenant for life at the time, by the Lease of the Father, that the same shall not be a bar for Waste done after that Deed. Otherwise it is if the land passe, for then it is as a Lease without impeachment of waste, 31 E:3. *waste* 103. see 3 E:3. 44.

See 2 H:4.24. That nothing passed by the Deed, is no plea in waste by him in the Remainder, but it is a good plea, that he did not lease by the Deed, &c.

Tenant in tail shall be barred of waste for his life by release of his right to the Tenant of the land, 13 H:7. 10. 38 E:3. 27.

Warranty to the Lessee and his Heirs, holden no bar in waste, 6 E:3.7. 20 H:7.2. it is agreed a good bar, vi. 20 H:6.21.

Release of Actions personals, after the waste done by a Prior, Lessor, shall not bar his Successors of an Action of waste, because the house hath an Inheritance in it presently, otherwise it is if he had taken amends, 42 E:3.22. 10 H:7.3. but it seems to be a good bar as to damages, 13 H:7.10.

If a Prior licence the Lessee to cut Trees, the same shall discharge him in waste brought by the Successor, 44 E:3. but if he cutteth down the Trees, and then the Prior doth release to him, the same shall not bar his Successors, 21 H:6. ac.

If an Abbot Predecessor makes a Lease, and covenants that the Lessee shall take Timber, &c. in another wood which is not leased, the Lessee shall not take it without delivery, but by such Covenant the Lessee shall not be discharged of waste, although the Abbot will not deliver the Timber, if there be sufficient upon the land, otherwise it is if he hath not sufficient &c. 44 E:3.21. see 3 E:2. *waste* 5,

Waste of Trees, it is no plea that the plaintiff took them, 44 E:3.44. And if the Defendant saith, that a house fell by wind, it is a good Replication that it was for want of Coverture, 44 E:3.44.

If the Lessee cutteth for Houseboot, &c. or to make a Bridge in the land, as he well may: If now others who have Common of Estovers there, or Estovers certain, cut down the small Trees, or Brush, which the Lessee hath cut before, so as they grow again, the Lessee shall be punished in waste.

Waste brought of a Meadow drowned, by reason that the banks of the River were broken down, and not repaired, so as it could not be mowed; The Defendant said, that the Plaintiff had a Mill, &c. of which the banks were not repaired of the Pool belonging to it, &c. and they were at issue, if for want of repairing the same, the land where, &c. was drowned, 46 E:3. *waste* 91. 20 H:6.1.

Waste, for that he had made waste in a Pool which he held as Guardian, he.

he said, that he let out the water by a pipe, because he could not otherwise fish in the Pool for Reeds, and left sufficient store, at the full age of the plaintiff, issue was taken upon it, and the View there, and it was holden, that although he sell fish, and store his own pound &c. it is not waste, if he leave sufficient at the full age of the Infant, and that shall be tried by Neighbours: The like Law is of Deer in a Park, if he store his own parks with the Deer, yet if he leave sufficient Deer to shew at his full age, it is not waste, 5 R.2. waste 97.

Lessee of a Wood, Mine, or Piscary, may sell, &c. 17 E. 3. 7. 12 E. 4.8.

Waste against Guardian, he pleaded an Agreement betwixt the Plaintiff and her Coparcener that the Plaintiff should give the other for equality of partition, certain Trees, &c. and that he as Guardian, cut them down and delivered them, &c. And issue was taken that the Agreement was of a sum of money, and not as above: Also that he had cut down more, &c. (s) of greater value then the agreement was, and also in another place not appointed, &c. 11 R.2. waste 98.

Waste of three and twenty Oakes, the Defendant said, that he did repair the houses with them, the Plaintiff said, that he did that with four of them, and that he sold the others: And although by this Replication the Writ was confessed false in part, yet the Defendant said, that he did repair the houses with them all, 32 E. 3. Waste 104. 22 H.6. 24.

Note, 37 Eliz. in Com.B. If Lessee for life or years, fell and cut Timber Trees, it is waste, *Non quia vendebat, sed quia scindebat*; But if he suffer them to lye upon the ground without doing any thing with them, it is waste; and if he fell them with an intent to repair, if he after sell them, it is waste, *Non propter venditionem*, but because he felled them.

Waste of a Cottage, the Defendant said, that it was the Cottage of a Villain, and stood empty by reason of his death in it in the time of the Plague, and that no body would dwell in it: And the issue was, that he might have Tenants enough, &c. 32 E. 3. waste 104.

Waste against husband and wife, and that was found by their default before the Sheriff, and the wife was received in the Common Pleas, and pleaded, no waste done, 19 E. 3. waste 125.

The Guardian in Waste said, that he assigned Dower to the Mother of the Plaintiff, and because there was not a house upon the land, he cut down Trees and built two houses, and because he built them upon the Soil of another, it was adjudged, that he should build two more houses upon the Plaintiffs lands, to the value, &c. and find sureties that he should not do waste, 9 A. 3. waste 137.



VI. *Waste against an Abbot, Prior, where for them, where for a Master of a Colledge, Parson, Bishop, and the Bar.*

**I**T is no plea in Waste by a Prior that his Predecessor granted that it should be determined by Neighbours, 5 E:2.waste 5. But the Grant of the Predecessor under the Covent Seal that he shall be discharged of the Waste, will serve against the Successor, 21 H.6.46. So amends, or other agreement with the Successor, is a good bar, 42 E.2.22.

F.N.B. 59.E.  
and 57.E. 10  
H.7.1.

A Bishop, Parson, Master of a Colledge, Arch-deacon, shall not punish Waste done in the time of the Predecessor: Otherwise it is of an Abbot, Prior, &c. who also shall have an Assise of a Disseisin to the Predecessor, 2 H:4.3. the reason is, because the Abbot cannot make a Will, but the right doth continue in the house, notwithstanding his death.

Waste against an Abbot Guardian, who said, that the Ward fell in the life time of his Predecessor, after whose death no waste was done, 43 E.3. 8. and 30. 7 E. 3. 53. 49 E 3. 25. But if an Abbot Guardian be deposed, his Successor shall be charged for waste done in the time of the Predecessor. And if an Abbot command a Monk to do waste, the Abbot himself shall be charged after the death of the Monk, but not his Successor, 49 E 3.26.waste 95.

VII. *Waste by him who hath but for life, or years, with another who hath the Fee.*

**W**Aste against Tenant in Dower by the husband and wife, upon a Grant to them and to the Heirs of the husband, supposing waste to be done to their disinherisin, is good, 3 E:2.waste 4. 17 E.3.7. But Newton saith, 22 G.H.25. That the Writ shall say, *ad exheredationem* of one of them, and therewith agrees, 18 E.2. Brief 835. 2 H.5.7.

*Vi: F.N.B. 59. T.vi 29 Eliz in Com B.* Sir Roger Lewkner and Fords case, Wast was brought by two Co-parceners, and the heire of the third Coparcener, her husband being alive, and Tenant by the Curtesie, and the Writ was *Quod tennuerunt* and good, notwithstanding the Tenant by the Curtesie was not named in the Writ, because as the case there was, the Term was ended.

If two Parceners make a Lease for life, one taketh husband, hath issue, and dieth, the husband shall joyn in waste. So if one hath a husband at the time, and dieth, the husband ought also be named where he hath issue: But if the husband alone lease during the Coverture, he and the issue shall not joyn in waste. See from hence, that the husband of one Parcener shall be Tenant by the Curtesie of the Moyety of a Reversion.

He in the Reversion, and Lessee for life, joyning in a Lease for life, they shall also joyn in Waste, 27 H:8 13. So two Joynt-tenants, and to the heirs of one of them: But Tenant for life, and he in the Remainder joyning in a Lease, they shall not joyn in waste, vi. 13 H:7. 15. vi. 22 H 6. 25. ac. vi. 11 H:4. 1. pl. 1. ac. br. *Leases 2. ac.* And by Fitz. the Tenant for life shall recover the Freehold, and he in the Reversion damages.

*VIII. Waste against Guardian in Fait, and Guardian in Right, and Bar in it.*

**W**Aste against a Priorefs as Guardian, she said, that after the death of the Ancestor, a stranger did abate, against whom she recovered, after which no waste, &c. and a good plea, 44 E. 3. 27: *waste 80.*

The Guardian shall not be punished for waste done by a stranger, F.N.B.60.

If the heir recover in waste against the Guardian within age, he shall not recover the damages, which he shall do if he recover against him at full age, because it is then out of the Statute, which speaks that he shall lose the Ward, and damages for not sufficiency. Also the Statute shall not be recited against him, because the Action is at the Common Law: Also no respect to the value, &c. 12 H:4. 4. F.N.B.60.7.

In Waste against Guardian, the plaintiff need not count whether he be Guardian in Fait, or in Right, 5 R.2. *waste 97.* So he need not alledge in what land, nor the certainty of the Acres, but the Inquest shall find the certainty: And if the Defendant alledgeth that she holdeth the third part in Dower, the day of Writ brought, that being found, the Writ shall abate: And if it be found contrary, then the Jury ought further to enquire, and it is not material if it be found that she was endowed of the land by a stranger, as Guardian pendant the Writ, vi. 16 E. 3. *waste 100.*

Waste by the heir during his Nonage, the Sheriff returns the waste found, and because he did not return the certainty of the value of the land & of the age of the Infant, where the Statute is that he shall lose damages: It was holden, that a new Writ shall issue to enquire of the value, and another to the Sheriff where he was born, to enquire of his age; but Judgment shall be given presently, that he shall lose the Wardship, 16 E: 2. *waste 117. vi. 16 E: 3. waste 100.* But if the Sheriff take the Inquest by parcel, where the Waste is assigned in two Towns, a new Writ shall issue forth to enquire of the whole, if the Jury have not had the view of the whole, 12 H.4. 3.

Attachment against a Guardian who suffereth a house to fall, where he hath sufficient to uphold it, 9 H. 3. *waste 136.* But Guardian in Socage shall not be charged of such waste, 28 H.6 9.

It



It is a good Bar that he cut Trees to build a house for the Tenant in Dower, but then he shall be enjoined upon a pain that he build another house upon other land of the heir, 9 H: 3. *waste* 137.

The Guardian may re-edifie houses which he finds fallen down in his time, and may allow Ash and Oakes for fire-boot, wherere he could not take other, yet the Verdict was generall, that he cut down Trees, 20 H: 3. *waste* 139.

The Guardian said, that the Plaintiff was borne before the marriage, and because he would bastardize the Infant to his disinherisin, he lost the Wardship: And it was awarded that he should pay so much to the rebuilding of the houses, 10 H: 1. *Waste* 142.

The Guardian commits Waste, and then grants over his Estate, the Writ shall be against him *quasi tenet*, t. E. 1. *Waste* 126.

It is no plea for the Guardian in Fait, that after the Lease to him, no Waste was done, 26 E: 3. *waste* 10. and therewith agrees, 27 E: 3. 5.

IX. *Waste against Tenant for life, and the Bar in it, where there is a mean Estate for years, or life.*

**W**Aste will well lye against Lessee for life, notwithstanding a mean Remainder or Reversion for years, 46 E: 3. 17. 4 E: 3. 18. So for him in the Reversion, notwithstanding a mean Remainder for life, 50 E: 3. 3. *F. N. B.* 59 H. But not for him in the Remainder, nor where the Reversion is granted for life, 33 E: 3. *waste* 144 10 E: 4. 9.

A woman Lessee for life, took a husband, the Lessor did confirm to them for their lives, now waste doth not lye during their joynt lives, by the reason, 6 E: 3. 19. as it is abridged, by *Pigot*, because the issue shall be, if he did lease. But see the book, that by the opinion of *Herle* and *Chauntrell*, the writ doth well lye for the heir of him who doth confirm, and he shall say that he leased, and maintain it by shewing the speciall matter: But it is cleer, that the Action of waste is not lost by the confirmation, 8 E: 3. 26. 9 E: 3. 9. But there it seems if he be not in by the Confirmation, it is not as a Lease, &c. yet *Chauntrell* said, 6 E: 3. 19. That if the Disseisor confirm to the Disseisor for life, he shall have waste, and *Fitz.* notes that to be law. But *Litt.* holdeth *fol.* 36. that the Disseisor hath now a lawfull Fee.

And see 17 E: 3. 68. VWhere a woman Lessee for life, took a husband, and the Lessor did confirm their Estates for the life of the wife, and afterwards brought waste, supposing them Tenants for the life of the wife, of the Lease to the wife before the Coverture, and good. So a Confirmation which doth not enlarge the whole Estate, shall not alter any thing.

VWaste is dispunishable, where there is a mean Remainder for life, because otherwise it should be defeated, 11 E: 3. *Receipt* 118.

If Lessee for years grant over parcell of his Estate, yet the Action of waste lyeth against him alone, 2 E. 4. 11.

Waste of Tenant for life dispunishable, for the Estate mean of him who hath sued execution of a Statute Merchant, with averment, that before that no waste was done, 19 E. 3. Waste 31.

X. The manner of Inquiry of Waste, and how it shall be done upon it, and how the Record shall come in.

**W**Aste found before the Sheriff, and the Verdict sealed with the seal of the Office, was delivered in Bank by the Plaintiff, and well, being delivered to him, &c. And he had Judgment of the parcell found, where he had assigned waste in parcell whereof there was no Inquiry, vi. 23 E. 3. 1.

But see 14 E. 3. Waste 27. agreed, he shall not have Judgment of the parcell found, where the rest is not enquired of, but *Postea* entred, and *scilicet alias* awarded, and the Sheriff shall be amerced, as the Plaintiff should be if he had enquired of the whole, and of parcel no wast found, &c. for the King shall not lose the amercement: and see 12 H. 4. 4. That if a Sheriff do not his Office in part, as not to enquire of part, &c. the whole shall be enquired of again, by *Thirning*.

All is void in waste against the Guardian, if the value of the ward be not found, 16 E. 2. waste 117.

The return of the Sheriff is good by intendment, although he do not say, *in fact quod accessit ad loca*, &c. As a return that he did waste in two Towns, and that he took the Inquest *de vasto predicto*, in one Town, &c. 12 H. 4. 3. where he made view to the Jurors, of all the places. But 16 E. 3. *Return de vis* 82. That although that he go to all the places, yet if he take the Inquest at one place, which is none of the place, he shall be amerced, and a new writ awarded; It is said, 34 H. 6. 44. That the ancient form is, as is, 12 H. 4. 3. but the best course shall be to return the speciall matter, (1) *Accessi ad loca & capi inquisit. prout in scedula*, &c. See also there, that it is no return, *quod fecit vastum in diversis Messuagis*, &c. in divers Towns, but it ought to be certain, as in a Barn, Chamber, &c. and that in such a Town, or such, &c. 34 H. 6. 45.

Waste assigned in two Towns, the Defendant said, that one is a Hamlet, &c. if this be found, all shall abate, without more; but if he found a Town by it self, he ought to enquire of the damages of every parcell by it self, for the waste is confessed. And that although no waste be found, yet the damages shall be taxed certain, 9 H. 6. 66, 67. And see there that upon a forraign plea by which the Waste is taken as confessed, if it be found against the Defendant, the same Jury shall tax the damages.

See :



See 33 Ed. 3. Judgement 255. Where upon a forraign Release pleaded, the same Enquest did enquire further of the wast, But where upon issue that there was no such Town; it was found such Town to the Damages, yet no judgment was, but a new Writ awarded to enquire of the Wast, 13 E. 3. Wast 29. 28 E. 3. Wast 66.

Upon a Writ of enquiry, it behooves that every parcell be found by it self, &c. and what is become of the Trees, and what remain upon the Land, and if the Defendant have built a new house with them, M. 19 E. 3. Wast. 30.

And where a Writ issueth upon a presentment for the King, &c. The Sheriff ought to enquire, if the party hath found Sureties not to do wast, and how he holdeth, and how it came to the Kings hands, 20 H. 3. Wast 138.

Wast found before Justices of *Nisi prius*, and at the day in bank the Sheriff amended his return, and make it, that he had done wast in diverse places through the whole wood, where it was before; that he had done wast in a hundred trees, price every one, &c. and he did well to make it certain, 20 E. 3. amendment 67.

A new *Venire facias* was awarded, because the first was not, that he should not take them, who were of any kinn or affinity to the Plaintiff or Defendant, 2 H. 4. wast 57.

*Quere* if the *Venire facias* ought to have this clause, *Et interim terram illam videant*, when the issue is upon a collatterall matter, as upon a confirmation, that the Enquest was discharged upon that Challenge, 7 Edw. 1.

XI. Where a Writ shall be awarded to enquire of wast, and where it shall be taken confessed upon the plea, and where damages shall be assessed of every part by it selfe, and the form of Enquiry.

**A**T the grand distress, a Protection was cast, and at Resummons bee did not appear, a writ of Enquiry shall not be awarded, but a *Pone per vadios*. 27 E. 3. wast 13.

Summons, Attachment, and Distress, is the process given by the Statute, and upon a *Nihil* at every return, a Writ of Enquiry shall be to the Sheriff, 21 H. 6. wast 45. 12. H. 4 4. And there it is said, That at the Common Law, the process was distress infinite.

And the wast being found upon a Writ unto the Sheriff upon Default, the Tenant shall not stay the judgment, by alledging that he was not summoned, M. 19. E. 2. wast, 119.

A Writ of Enquiry shall issue forth, notwithstanding the incertain Assignment, Wast 100.

In a Writ of waste, the Defendant did demur, if the reversion did pass by the name of lands and Tenements, and that being adjudged against him, a Writ of Enquiry shall not issue forth, the waste is confessed, but a Writ of enquiry for the damages only, 34 H. 6. *wast* 40. 9 H. 6. *wast* 40. and other books contrary.

Vi. 4 Eliz. Dyer upon *Nihil dicit* in waste, a Writ issued to the Sheriff, That in *Propria persona accedat ad locum vastatum*, to enquire of the damages, it was holden that he need not go in person, according to the Statute of *Westminster* 2. for that Statute extends only to a Writ of Enquiry of the Waste it self.

If at the grand Distress returned, day be given over upon the plea of the Defendant who doth not appear at the day, now a Writ of Enquiry shall issue upon the Statute, but distress infinite at the common Law, 7 H. 6. *wast* 61.

## XII. The form of the Writ of Waste.

**W**rit of Exile of people, the Writ was good, being generall *Quod fecit vastum de hominibus* 2 H. 6. 11. M: 12 E. 2. *wast* 13. vi. 3. *wast* 2.

Writ upon a Reversion granted to husband and wife, the Writ was *Ad exheredationem eorum*, and good, H. 3. E. 2, *wast* 4. See 8 R. 2. *Wast* 147. Where such a writ was awarded good, *Ad exheredationem*, of the husband. If an Abbot brings the Writ, it must be *exheredationem ecclesie*, and see Ma. Dyer 129. The Bishop of Carliles case, the Writ was, *exheredationem Episcopi*, and yet see F. N. B. 59. O. That a Bishop shall not have Writ.

A Writ of waste brought by husband and wife, and of the Right of the wife, the writ was, *Ad exheredationem* of the wife, and awarded good. But a Writ of Escheat of the right of the wife, sayd, *Ad eos revertere debent*, 3 H. 6. *wast* 34.

W. and H. seised to them, and the heirs of W. leased for life by fine, bringing the Reversion to them, and to the heirs of W. and bringing waste, the writ said *Ad exheredationem*, W. and well, 2 H. 5. 7. *wast* 54. 18 E. 3. *Brif* 835.

Upon a Lease of the Wife during coverture, for the life of the wife, waste after, supposing to the disinheresie of the wife, 41 E. 3. *wast* 83. 42 E. 3. *Brif* 554.

Waste by I. as Lord by Escheat after the death of him in the remainder, who was Bastard and dyed without issue, without supposing a Tenure between the Lessee and him: Also the said Defendant and his Wife had an estate taile, &c. and the Writ said, After the death of the wife and he in the remainder to the Plaintiff as Lord, *Revertere debent*, and did not make mention after the death of him the Defendant, and good, 34 H. 6. 1. *wast* 34.

A a a a

Wast



Wast by husband and wife, supposing that they did lease &c: good, 3 H.6.53. 22 H.6. wast 47.

At the Common Law, no Writ of wast was against Tenant by the Curtesie, and therefore the Statute shall be recited in the writ, otherwise it is against Tenant in dower, and guardian in Knights service, 20 H.6.1. wast 43. 12 H.4.3. wast 62. F.N.B. 55. the writ good, though he doth not recite the Statute, but the Register doth recite it, Fitzherberts Reports Nat. Bre 56.

If Lessee for life doth wast, and granteth over his estate, the Writ shall be against the Grantor, and shall say, *Quas tenet*, but against guardian the heir being of full age, and against Lessee for years, his Term being ended, the Writ shall say, *Quas tenuit*, 41 E. 3. 23. wast 70. So when *Cestui que use* dyeth, the Writ shall be *Quas Tenuit*, 1 H.6.14. 46 Ed.3. 25. 40 E.3. wast 67. and *quas tenet*, against guardian who hath granted his estate temp.E.1. wast 126:

After confirmation to the husband and wife who held for her life before, the writ shall say according to the purchase of the wife before Coverture, 17 E. 3. wast 109. but of the Writ where the confirmation is to them for their lives, See 6 E. 3. 19.

If Tenant by the curtesie maketh a Lease for years and dyeth, it seeme the writ may say that the heir leased, but if he declare of a Lease of his brother there, of ancients time then the Lease of the Tenant by the curtesie, or at the same time, where in truth he confirmed after, the Tenant shall abate the writ; 8 E. 3. 25.

A man leaseth to husband and wife for the life of the Lessor, and grants them by another Deed, that they may fell trees: &c. without impeachment &c. and afterwards releaseth to the husband and wife, and to the heirs of the husband who dyeth, his heir bringeth wast, supposing the Lease unto the husband and wife, and to the heirs of the husband, and it was the opinion, that upon the matter shewed, it doth not lye, living the Lessor, but otherwise the writ is good, 8 Edm.3.34. see of this, 5 H. 5.9.

Wast, *Cum de communi consilio*, &c. in Lands, houses, woods, and Gardens, hath done wast in woods, *et hominibus quas tenet*, of the plaintiff, *ex assignatione* W. of whom the Defendant, *Tenuit ad eundem terminum*, without mentioning any lease, and good, M. 11 E. 2. wast 113.

The Lessor puts out his Termor, and enfeofeth a stranger, upon whom the Termor enters, commits wast. he brings an action of wast, the Writ saith, *ex assignatione* and good, 5 H. 5. 12. wast 56: 46 E. 3. 25: wast 92. agrees, where the seoffment was by the assent of the Termor, saving his Term, who afterwards attorned, and he need not shew any thing of the Assignment.

And where a Reversion is devised, the Writ may well say *ex assignatione*, or *ex dismissione*, or *ex legatione*, vi. 34 H.6.7. wast 50: 10 H.6.8. breif 130.

VVast against Tenant in Dower, supposing that he held of his inheritance, without more, where the Husband was seised, acknowledged a Fine, and took back an estate for life, the remainder in Tail to the ancestor of the plaintiff, the writ shall not say, *ex assignatione*: So where the husband alieneth the Land and dieth, his wife is endowed, the writ shall be generall, that he held of his heritage, not *ex assignatione*, but where the Reversion is granted, 38 E.3. *Wast* 66. See 46 E.3. 17. *Wast* 68.

VVast against husband and wife, supposing that they did VVast where it was done before Coverture, and good, and the husband charged, 19 E.3. *Brief* 246.

Attachement of VVast against the Guardian by the mother of the infant in his own name, 15 H.3. *Wast* 131. P.10.H. 3. *Wast* 142.

### XIII. Pleas to the Writ of Wast, and where he shall have one Writ upon severall Leases.

THE Defendant said, that the Plaintiff had disseised him of part of the Land, hanging the VVrit, *Herle*; answer to the rest, for he hath not assigned wast in that parcell, 8 E.3. *VVast* 16. 7 E.3. 43.

VVast against a woman, she pleaded a Lease to her husband and her, after which, no wast, a good plea, and the writ shall be maintained, to say, that she alone did the wast, without maintaining that the Lease was made to her alone, for she had pleaded that matter to the action, 3 E.3. *Wast* 21.

In wast upon a Lease to the Defendant, he shewed, that the Lease was to him, and unto husband and wife, the husband died &c. it is no Plea, without saying, that the wife was seised the day of the VVrit &c. also it is no Plea, that the wife hath released and confirmed to the defendant, after which no wast &c. for this is also his wast, 46 E.3. *Wast* 93.

The survivor may plead a Feoffment as to him alone, which was to him and another, 14 E.4. 1.

If three Lease, and two release to the third, he may have wast, supposing that he himself did alone Lease, but if one had but for life, and the two release to him in Fee, he ought to have a speciall writ vpon his case *ex assignatione*, and if two Coparceners lease, and one dieth, the other shall have a writ, supposing that he leased, 46 E.3. 17. *Wast* 88. See 48 E.3. *Wast* 94.

VVast against Tenants in Common of a wood, the Defendant saith, that A. holdeth with them in Common, the Plaintiff saith that A. holdeth in Dower of the Assignment of the Plaintiff, so ought she to receive all the property of the Plaintiff, if she were named, also by so much it should be supposed, that she had equall estate in Common with both, the defendant did demurre &c. *M. 3. E.2. Wast* 25. *F. N. B.* 60.



Two Coparceners, one hath issue and dieth, the issue shall not have wast against Tenant by the Courtesie &c. without naming her aunt, as *Fitzh: reports, N.B. 60. &c. 9 H. 6. 11. wast 41.*

No such Town without addition, shall abate this writ, 13 E. 3. wast 29. So that one of the two Towns is the hamlet of the other, so that one wast is twice assigned, 9 H. 67. wast 40.

No such Town, nor hamlet is no plea, because it may be a Mannor, but the Plaintiff did maintain, that it was a Town, 7 H. 4. 8. wast 60.

Over-Dale and Nether-Dale is no Plea, because returned by View, 9: H. 6: 42. *Brief 54:*

It is a good Plea, that the Land was given to the Plaintiff and his wife in speciall Tail, and that she is dead, and that hanging the writ, the issue is dead, 2 H. 4. 21. wast 58.

Non-tenure is no Plea in VVast, 40 E. 3: wast 67: 38 E. 3. wast 66. but but the Assignee of the Lessee may well say, that the first Lessee is seised, without that, that we have any thing &c: 44: E: 3: 21.

VVast of Land, and a wood, it is no Plea, that the wood was excepted by the same Lease; for if he leased it by another deed afterwards, the whole writ is good, 44 E. 3: VVast 79: *Fitzh: N: B: 60.*

VVast may be well brought after an Entrie for forfeiture, 45 E. 3: wast 87.

Nonhability, if one defendant, as *Cochanon*, shall abate the writ, if it be not maintained by speciall matter, 19 E. 3: wast 95.

Wast against Guardian, without alledging in Right, or in fact, and declared *de hominibus & boscis* generally without alledging other words of form, 6 R. 2. Wast 97.

Where three Coparceners bring the Writ, the death of one of them shall abate the whole Writ, 8 E. 2: Wast 110.

The Defendant saith, that he holdeth of the Lease of the Father of the Plaintiff, and *A.* his wife, and that *A.* is alive, the Plaintiff said, that *A.* had nothing, but as wife, and upon that they were at issue, 15 E. 2. wast 116.

#### XIV. The Count, or Declaration Wast.

**VV**ast, the Writ was gnerall *de domibus, boscis &c.* and the Declaration of a *Pale*, and good, if the Action lieth for the *Pale*, 22 H. 6 47.

Wast against Tenant in Dower of his inheritance, if she doth not appear, it needs not to be alledged in the Declaration, that the Plaintiff is heir or privy &c: but it onely ought to shew the certainty of the Wast, and it shall not be intended by Grant, Reversion, for then the Writ should be *ex assignatione*, but if she do appear, then he ought to make him privy

privy in the Declaration, and in a *Quare impedit* he ought to alledge a certain cause in the Court, 34 H.6 48 *Wast* 51.

The Writ *ex assignatione*, and the Declaration was upon a Lease for years, by T. who put out the Lessee, and enfeoffed the Plaintiff, and the Lessee now Defendant did re-enter, 5 H.5.12. *Wast* 56. 46 E. 3. *Wast* 92.

*Wast*, Declaring, that he cut Hasells, Thorns, and VVillows, and set the price of each by themselves, and that he did dig up the roots &c. and good, and it shall not be said a demanding of the place twice, P. 41 E.3. *Wast* 82.

So of Stocks and Germines 9 H.6.67.

*Wast*, the Plaintiff declared upon a Lease for years, to begin at such a Feast, the Defendant shewed forth a Deed, proving the same to begin at another Feast, yet the Declaration was good, because it is not founded upon the Deed as a Covenant &c. 31 E. 3. *Wast* 102. Also it is good without setting forth for how many years &c. *Pig.* if the Defendant had not passed the advantage of it, for the Enquest was taken by default, *Vide* 5 H.5. *Wast* 55.

*Wast* Where a man declares of waste in divers Towns, he need not shew the value of each by it self, nor where the exilement of the Villains is done, 9 H.6 42 *Count* 17. But must shew the certainty of every thing whereof the waste is assigned, 9 H.6:66.

Upon a generall writ, he declared, that the Defendant did suffer the hedges to be unrepaired, by which Cattell did destroy our Germines, 20 H.6. *Wast* 42.

So that he suffered the Land to be drowned &c: for not repairing the banks, &c. 20 H.6:1:46 E.3. *Wast* 91.

The writ saith, *ad terminum annorum*, and the declaration good of a Lease for half a year, 7 H.7:2: 46 E:3:31 The Lease was unto the Testator of the defendant for life, and half a year over, 46 E.3.31.

*Wast* by two upon a Lease by Fine, where the Reversion was to them and the heirs of one of them, they were driven to set forth in the Declaration of whose gift, 2 H:5: *Wast* 54.

### *Replication in Wast.*

THE Guardian said, that he builded a house for the Tenant in Dower, it is a good Replication, that that was upon the Land of another, and not upon the Land of the infant, 9 H.3: *Wast* 137:

The Defendant pleaded the Deed of the Plaintiff, reciting a Lease of his father, and further Leased and released the Action of waste &c: *pro 1. to tempore suo*, the Plaintiff did averre the *Wast* was done after, with that, that nothing passed by the deed, upon which issue joyned, 31 E 3. *Wast* 103.

It is a good Replication, that the Ancestor who granted that he should not

not



not be impeached of wast, had but an estate in tail, in reversion &c: 38 E.3.27: *Wast* 66.

VVast of Hasells, the Defendant said, that they grew in a Park under Oaks, it is a good Replication that they grew in a quarter of the Park, where were no Oaks &c: 40 H.3.25 *Wast* 69:44 E.3. *wast* 82.

The Defendant said, that the house fell by Tempest, it is no good Replication, that the Defendant did covenant to repair them, and to leave them in as good a plight &c: 43 E.3:6:6: *Wast* 76.

The defendant said, that he Leased excepting that part wherein the VVast is assigned, it is a good Replication, that he leased that afterwards, 44 E.3:34: *Wast* 79.

The Defendant saith, that the Plaintiff had not any thing, but in Coparcenery with K: who took to husband R: had issue 7. and died, and R: is living, the Plaintiff did averre that she alone did make the Lease, and upon that at issue, 22 H.6:24: *Wast* 47.

VVast against Tenant in Dower, she saith, that she leased unto the Plaintiff and R: for life, upon Condition, and entred for the condition broken, after which she &c: it is a good Replication, that he was within age at the time, and did not agree, nor took the profits, 30 E.3.16. *wast* 26.

*XV. Wast against husband and Wife, and bar to it, and Pleas for the Wife &c. after Receit, and wast against a woman after the death of her husband, or against Tenant for life, and him in the Reversion.*

**W**Ast against husband and wife, after a Plea, that no wast was done, she being received, shall not pray that he assign new wast, 8 E.2. *wast* 16.

VVhere a woman shall be punished for wast in the time of her husband, See 10 E.3.17: and how the VV: it shall be for wast before coverture, 42 E.3. *Breif* 554.

VVast against T: found by default, W: shall not pray to be received upon a Lease to him, and 7: and his heirs, contrary to the writ, 14 E.3: *wast* 27.

VVast against husband and wife, after no wast pleaded, the wife was received at *Nisi Prius*, and pleaded speciall Bar, 21 H.6: *wast* 53.

VVast upon a Lease by husband and wife, see the form of the writ, 22 H.6: *wast* 47.

XVI. Where Waste shall be assigned, and how assigned twice, where assignment shall be made after the writ brought.

Waste assigned in Trees, and in stocks and germines of the same trees, and good by *Paston*, it behoveth that he alledgeth the value of the trees, and also of the stocks, and germines, because severall things, 6H.67. *wast* 40. 22 H.6. *wast* 46. agrees per *Curiam*, see 41 E.3. *wast* 82. contrary.

If the Defendant make default, the Plaintiff shall make assignment to have a Writ to the Sheriff, shall shew the quantity of the Land wasted, and the certainty of the waste, 34 H.6.48. *wast* 51.

Waste by an Abbot &c. upon default, he ought to assign the certainty, if in his time, or in the time of his Predecessor: So where a Lease was to husband and wife, &c. and because the Sheriff did not enquire of it, a writ was awarded to make new enquiry, 2 H.4.3. *wast* 57. But it is said, 21 H.6. *wast* 53. where the Successor may punish waste, as an Abbot, it need not appear in the writ, nor in the Declaration, in whose time &c.

Waste found by default against husband and wife, the wife received, pleaded, no waste the other shall not maintain that waste was after the writ, for he cannot so assign it, but he shall recover the place wasted and damages, but *Quare* if he may charge the Jury with it, where it is at their liberty to find it, 19 H. *wast* 121.

XVII. What act or thing shall be said Waste, what not, and where doing or omission of a thing shall be said waste, where not.

THE breaking of iron, or timber to repair a Mill leaséd to him for years, is waste, 4 E.3. *wast* 22.

The Guardian may well take down the Posts, where the house is fallen by a wind, or a house which was never covered, and burn the wood, 40 Aff. *wast* 24. 22 H.6. *wast* 48.

Cutting of Oaks which is dead wood, is not waste, but putting of beasts into a Close, which destroy the young springs, is waste, so cutting down of green wood, where there is sufficient dottards and dead wood, 20 E.3. *wast* 32: 21 H.6: *wast* 53.

To suffer Land to lie fresh, is no waste, 2 H.6: 11: 37: 5 H.3. *wast* 13. So is it of the overthrowing of Saffron beds, 10 H. 7: 3: but otherwise it is of plowing of Meadow. *F N B* 59.

To suffer a house to decay for want of covering, where it was well covered at the time of the Lease, is waste, 7 H.6. *wast* 37.

*Rabbington* saith, that Quick-thorn destroyed is destruction, and so within.



within the Statute, 9 H:6:67: *wast* 40: See of that 46 E:3: *wast* 88. But *Chandisb* saith, that wast shall not be assigned in Underwoods, if not by eradicating of them, so as they cannot grow again.

But see 45 Edw. 3. 25. *wast* 69. That Hasells and Willows shall not be sayd underwoods, but where they grow under, and not amongst great woods 20 E. 3. *wast* 32. 10 H. 7. 3.

Willows growing in the sight or view of the Mannor, are wast, if they be cut down, 40 E. 3. 15. *F.N.B.* 60. So if they do uphold a Bank, 12 H. 8. 1.

See 8 E. 2. *wast* 111. and *temp* E. 1. *wast* 124. That Willows, Hasells and Ashes of small value are not wast, because they will grow again.

Of wast in Gardens and Orchards, see 16 H:3 *wast* 135. 10 H:7. 3. 44. E. 3. *wast* 7. 7 E. 1. *wast* 122.

Lessee for life, years, or Tenant in Dower, shall not prescribe for the cutting of seasonable wood, every ten, or seven years, 40 Ed. 3. 25. 10 H. 6. *wast* 42.

Lessee at will of a wood, may sell underwoods &c. but if they be great Trees, he may not cut them down, 12 E. 4. 8. Where the Lessee did cut to sell, see there, and 17 E. 3. *wast* 101. of the cutting of seasonable wood in such manner as hath been used to be, is no wast, *Fitzherberts Natura Brevium* 57.

Digging of Gravell or clay is wast, but it is a good barr, that he digged clay to make morter, to repair the houses, and if he sell any part of it, it is wast, or if more then is needfull, wherefore he sayd, that the Surpluse was digged the better to convey the water away which drowned the land, and that he let it lye upon the land without selling of it, 22 H. 6. *wast* 48 41 E. 3. *wast* 82: *F.N.B.* 59.

To suffer a Will which is covered to fall down, is wast, 22 H. 6: and 44 E:8:44: 10 H. 7:3: Removing of a furnace which is annexed to a freehold is wast, but if the Lessee set it there hee may remove it during the Term, 42 E. 3. 6. 20 H. 7: 13.

### XV III. *Wast with Privy or Attornment.*

**T**He Lord by escheat of a Remainder, shall have wast &c. 3 H. 6: *wast* 34. 34 H:6:7: and 8. 45 E:3:3:

If the Lessor for life grant the Reversion to an Abbot, the Lord shall have wast, but there he behooves to claim for the mischeif of the statute, but the Lord of a villein who purchaseth a Reversion shall have wast without claim, so the Devisee of a Reversion, so he of whom Tenant for life prayeth in aid, as of him in the Reversion, so he who recovers a Reversion, so where the Lessor or Lessee enfeofeth a stranger, upon whom the Lessee entreth, &c. so where the King grants a Reversion, but the grante:

grantee of the Reversion by fine shall not have Waste without Attorn-  
ment, 34 H.6:7. and 8: 5 H: 2: 5: 5 H: 5: *wast* 56: 2 H. 5 *Monstrans de*  
*faits* 121: 48 E:3:15:12 E:4:3:39 H:6:24: 5 H:7:19: *acc*: 34 H:6:7: and  
8: 34 H:6:24: *Litt*: 6 E: 3: 17: 45 E:3:3: 13 H:7:27: *by Vavifour*.

Two husbands and their wives make a Lease, one of the wives after issue  
dyeth, her husband shall joyn in waste with the other parceners, 26 H. 6.  
*wast* 47. *vi*:35 H.6:23. 41 E:3:7. 48 E:3:14:

He in the Remainder shall have waste, but if the Lessor release to him  
in the Remainder for life, and his heirs, he shall not have waste, because he  
never had Attornment. otherwise it is of such a Release to him in the Re-  
version for life, for he shall punish waste done after the Release for the At-  
tornment before, &c. 48 E:3:16: *wast* 94: *vi*:46: E:3: *wast* 88:

**XIX.** *Where the Plaintiff shall recover in Waste more then the place  
wasted, and what shall be sayd waste, and where he shall reco-  
ver the place wasted after the Writ.*

**T**he Hall shall not be recovered for other places wasted in the house;  
15 E:3: *wast* 108. But for waste found in the Hall all the house shalbe  
recovered, because the same is the principall.

All the wood shalbe recovered for waste done in diverse places of it  
&c: 20 E:3: *Amendment* 67: 4 E: 3:32. and so although there be mea-  
dow, or Arable Land in parts of the wood, if it be all one wood, and any  
waste in every part, *temp*. E: 1: *wast* 227: 7 E:3: *wast* 193. he cannot reco-  
ver the whole wood upon the cutting down of four Oaks in diverse places  
of the wood.

*Ing.* saith, That for cutting down of appletrees in a garden which en-  
compassed the house, a man had recovered the house: *Heng*, That was  
for another cause, *temp*. E: 1: *wast* 127: But *Stone* agreeth with *Ing*: 4 E: 3:  
34: *estrepe*ment 10.

Waste assigned in a Grange, Cottage, and Appletrees, the value of  
each found, and he did recover the place wasted, and treble damages, but  
not for the inclosure because there was no waste in any house in the in-  
closure, *temp* E: 1: *wast* 123.

The Plaintiff shall recover also the place wasted after the Writ brought,  
and damages, 19 E:3: *Wast* 131:



*XX. Wast by one Joynt-Tenant or Tenant in Common, against the other.*

**I**F there be three Tenants in common, and one commits wast, the other two may joyn in an action of wast against him, *M:3 E:2: wast 25*: One Joynt-Tenant shall have wast against the other, because they are not compellable to make partition, by *Fitzherbert* and others, *27 H:8:13*: But see *15 E:3:wast:96*: contrary, where they were Joyntenants to them and the heirs of one of them.

One Coparcener shall not have wast against the other, because they are compellable to make partition, *27 H:8:13*: and therewith agrees, *9 H:6:11*: See *9 H:6:wast 41*: wast for one parcener against the husband of the other Tenant by the curtesie, assigned in the moyety.

*Vi*: That Tenant by copy of Court roll cannot cut down Trees to sell; but he may do for necessary Reparations, *9 H:4:wast 59*.

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*XXI. Where the Tenant shall be discharged by Reparation, after wast done.*

**I**T behoveth that the Reparation be done before the Writ brought, *38 Ass. wast 23*. and so he may well cut Trees to repair, *40 Ass. wast 24*. *11 E:3:wast 28*. *29 E. 3. wast 30*. and *20 E.3. wast 32*. *22 H. 6. wast 48*. *12:E.3. wast 28*. *21 H.6. wast 53*. But he cannot justify the cutting down of more trees for the repairing of the houses, then are necessary, *32 Ed.3. wast 101*. *41 E.3. wast 82*.

*XXII. The form of the Return in a Writ of wast.*

**O**F the Returne of the *Distringas*, in *VVast*, see *34 Hen. 6: 48: wast 51*.

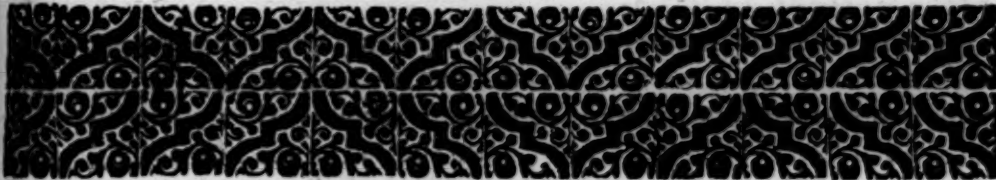
And where wast is assigned in diverse Towns, &c. *12 H:4: wast 62*: and *34 A:6:48*:

And of the Return amended, *20 E:3: Amercement 67*:

**XXIII. Wast**

XXIII. *Wast against Tenant for life before the Statute, and the Judgement.*

**N**O wast was pleaded in issue, and Exilement found, and good, 15 H 3: *wast* 130: and then no wast before the prohibition, was a good plea, but upon waste found, Damages were recovered, and it was said to the Tenant that he do not wast, upon pain of Losse of the Land, 4 H: 3: *wast* 140: and he found pledges &c, 15 H: 3: *wast* 132. for wast done in a house, he was commanded to re-build it, and gave sureties that he should not do wast after, 9 H. 3. *wast* 137: and 20 H: 3: *wast* 139: and 10 H: 3: *wast* 142: and where Tenant in Dower did wast in a Wood, it was awarded, that the Plaintiff should have the wood, and that she should have house-boote &c: for the Plaintiffs life, and was amerced for wast done against the Prohibition, 4. H. 3. *wast* 120:



# VOUCHER.

I. *Where a man shalbe vouched by reason of a possession, and bound to warranty by it, of a Bastard, younger son, and heirs in Gavelkind.*

**I**F a Bastard entreth, and occupieth with the Mulier, hee shall be vouched with the Mulier, if he occupy as heir, but if the plea do stay in that case for the Nonage of him who is the Bastard, to take away such delay, Bastardy shall be a good Counterplea, P. 32. 2. 3. *voucher* 94. But where the Bastard is vouched by himself as heir, it is no Counterplea to say that he is a Bastard, because he is Heir in possession, 19 E. 3. 59. for a stranger shall not confesse any heir, but he who entreth as heir, and continueth possession, but if he entreth with the Mulier, both shall be vouched, 20 E. 3. *voucher* 119. 43 Ed. 3 *Voucher* 64.

But contrary if the heir of the Bastard be in by descent, and the Mulier dyeth without heir, now the Warranty is extinct, for although the Bastard hath the Land by way of Estoppel, yet as to another estranger, he is a meer stranger to the Ancestor, so it seems he may well avoid the voucher



cher in every case, where he is vouched without the Mulier, for no continuance of possession shall make him heir as to the Titles of strangers, 5 H:7.2: 22 E.4.10.

And therefore if the Bastard be in by descent, as heir to the tail, and the Mulier dyeth without issue, he in the Remainder, or the Donor shall have a Formedon against the heir of the Bastard, notwithstanding the continuance of the possession of his Father without interruption, 39 Ed. 3.38.

A Bastard vouched as heir, dyeth without issue, the Voucher is gone, but *Wilby* sayd, That the Demandant shall vouch at large, 18 Edw. 3 voucher 3.

The elder brother shall be vouched with the younger brother, who hath Land in Burrough English, one as heir at the Common Law, the other by the Custome, 11 H:4. 21. 22 E.3 voucher 22. So if the younger Brother be Demandant, but he shall never be rebutted by the warranty of the Ancestor, 11 H.4.21.

A man seised of Land at the Common Law, and in Burrough English, enfeoffeth his eldest son who giveth back the land to the Father and the youngest son, and the heirs of the Father, who dyeth, the youngest being impleaded shall vouch the eldest, who shall revouch him as heir, and the youngest by the Custome, and was ousted of the voucher, because the whole warranty was cast upon by the Discent, so extinct, otherwise it is of two parceners in such case, 40 Ed.3: 14.

The younger son shall never be vouched without the eldest, nor with him for cause of possession, nor for continuance of it, but only for land in burrough English, which might be recovered in value against him, as heir by the Custome, for none shall be heir by continuance of a possession, but a Bastard, 10 E:3:1:43 E. 3.3: 38 E.3. 33. contrary.

Also the heirs in Gavelkind shall not be vouched without naming him who is heir at the common Law, 32 E 3 voucher 94 31 E.3. Counterplea of voucher 88. 33 E.3. voucher 313. and 314. See 11 Ed: 3: Debt 7. All were charged for the death of the Ancestor, upon a voucher of the heirs in Gavelkind, see 38 E.3.27. where it is a good plea for the heir of the Voucher to say, that he hath a Brother, and nothing descended but in gavelkind, vi. E.3.27.

And that the warranty of Land Gavelkind shall not be pleaded against the younger brother by way of Rebutter, see 44 E:3:16: 22 E:4. acc. if the elder son be generally vouched with the youngest by the custome, the customary Lands only shall be reserved in value, but if he vouched expressly as heir, and the other by the Custome, there both their lands shall lie in value, 5 E:2: and 22 E.4: 10.

The plea shall not remain for the nonage of one Brother in Gavelkind, if the Demandant will aver, that he hath none of the Land in Gavelkind, 25 E 3.

If the heir of the part of the Father hath nothing, the heir of the part of the Mother shall be vouched with him to render in value, 31 E.3. and 7 E.3.66 and 5 E.2. *Auswry* 207. but shall not be charged for Debt. 11 H.7.12.

See 26 E.3.59. Tenant by the curtesie vouched with the parceners to render in value.

II. *Voucher good by Entendment.*

**W**Here a man voucheth for rent, it shall be intended *prima facie*, Rent service, and that he who voucheth is pernor in fee, for the Ter-Tenant shall not vouch for a Rent service, otherwise it is of the pernor, 35 H.6.

III. *Where one shall vouch two by one warranty, or one at his Election.*

**W**Here one of Vouchees is returned dead, It is holden, that the Voucher shall abate, and the Tenant shall be driven to revouch the other, and the heir of him who is dead, for it is sayd, that the charge shall not survive, 17 Edw. 3. 41. 22 Edw. 3. *Counterplea of Garr.* 8.

But it is holden that a Warranty shall survive 17 E.3.8. and 30 E.3.31 the first voucher did stand upon such a Return, but see there that he might have revouched the survivor and the heir of the other, if he pleased, and so it is holden, 31 E.3. *Counterplea of Voucher* 88. 32 E.3. *Voucher* 84. But 39 E.3.26. is, that the one shall not be vouched without the heir of the other.

It is holden; That where two warrant land, and one dyeth or both dye, the Tenant shall vouch the heirs of both joyntly, and shall have the whole value of each of them, or he may have against them both at his election, because each doth warrant the whole, and both in common.

But hee shall have but one Recompence, 16 Henr. 3. 13.

But the Law is holden otherwise of an Execution upon an Obligation, 11 H.7.2.

If two make a scoffment with warranty, by *Dedi* only, and one dyeth, the whole warranty falleth upon the survivor, and he alone shall be vouched, 39 E.3.26. there he vouched two, and shewed the Deed of one, and of the Ancestor of the other, which had no warranty, but *Dedi*, and the voucher held good for the colour of voucher of both.

Husband.



Husband and wife levy a Fine of the wives land, and they and the heirs of the wife warrant the lands, the wife dieth, her heir shall be vouched alone, living the husband, because he had nothing, 4 E.2. *Voucher* 242.

But see 22 E. 3. *Counterplea of Garr.* 8. The husband alone vouched by Survivor, And see that for a Warranty made to the husband and wife, and to the Heirs of the husband, the Heir of the husband shall vouch, living the wife, 6 E.3. 27. vi. 28 E.3.7.

The *Mulier*, elder Brother, or the Heir of the part of the Father may be well vouched, without the Bastard, younger Brother, or Heir of the part of the Mother: see for that 38 E.3. *Garr.* 18: 31 E.3. *Counterplea of Voucher* 88.

IV. *Where a man shall vouch at large after that he hath vouched before, and where not.*

**I**F the Vouchee be returned dead, the Tenant may well vouch at large, shewing cause, otherwise not, by *Brian*, unlesse he vouch within the degrees, 8 H.7.6. and therewith agrees 15 E. 3. *Voucher* 23. and 18 E. 3. *Voucher* 3. *contr. in Dower.*

The plea doth stay for the nonage of the Son of the Vouchee who dieth, the Tenant cannot vouch his Cosin of the whole blood, where he hath a Sister of the half blood, for she is heir of the Father, and of that line the Warranty doth depend, 43 E.3.3.

If the Vouchee dieth, depending the Counterplea to it, the Tenant is at large to vouch a stranger, because the other is estopped, 41 E.3. *Voucher* 71.

If the Demandant Counterplead the Voucher to three parts, and grants it to the fourth part, and the Vouchee dieth, it is holden that yet the Voucher shall stand of the three parts to try the Counterplea, and that the Tenant shall vouch at large for the fourth part, because the Voucher was not granted of the whole, 50 E.3.2.

He who hath prayed in aide, and the prayer that joyned in aide shall never vouch at large, which he must do if he had made default, 9 H.6. 3. and 4. 18 E. 3. *Voucher* 7. Also he shall not vouch after aide prayed of the King for recompence, 9 E. 3. 15. yet there is a difference taken after a *Procedendo* granted, 3 E.3. 15. but 9 E.3.15. is contrary.

Husband and Wife Vouchees, he dieth, his Heir may well vouch, living the wife, and that without cause, 20 E.3. *Voucher* 130.

The Heir being vouched in the Ward of two, one died, the Tenant did re-vouch the other, and a stranger, and was driven to shew cause, and for cause said, that the Dead granted his Estate to the stranger.

The heir vouched in the Guard of *F.* Prior of *B.* and a stranger, the Prior dieth, the Voucher at large is to him, for by the name of *F.* he hath

no Heir nor Successor, but if he had been named by the speciall name of the Corporation, the variance shall not be suffered, 5 E. 3.

Note, where one Vouchee is returned dead at the Summons, and before his entry into the Warranty, the Tenant may well vouch a stranger in a *Præcipe*: For *Thirn* said, for yet it may be, that the first Voucher was false, H. 4 H. 4. 1.

Where one is vouched as heir to the Vouchee dead, it is a good Counterplea to say, that he is not heir, for he can vouch none but his heir, 41 E. 3. 29.

Note, if *H.* enfeoffeth *L.* who re-enfeoffeth *H.* and *A.* his wife, *H.* dieth, and *A.* is impleaded, and vouched *L.* he dieth. It was said, that *A.* as Assignee of *L.* might well vouch the heir of *H.* M. 2 E. 3.

If the Plea be discontinued, or otherwise without day (after Voucher, yet the Tenant shall not vary, nor vouch a stranger, but the same person again, and by the same name, and the same addition, 8 E. 3. 7. 2 E. 3. 13. Voucher 191.

See 14 H. 6. 7. That upon the *Sequatur* not returned, the Tenant may well alledge that the Vouchee is dead, and vouch a stranger; but not if any Writ were executed, or the *Sequatur* returned, 14 H. 6. 21. by *Vam-*  
page.

V. Voucher not suffered, which is contrary to the Writ.

**C**ofinage of the Seisin of *T.* The Tenant cannot say, that *7.* Son of *T.* did assigne to her Dower, and vouch him: For the Tenant may grant such a voucher without taking his Writ, and the Court shall never grant voucher contrary to the Writ, but Aide-prayer it may grant, 7 E. 3. 31.

Note, where the Writ doth suppose the entry by two, the Tenant may well shew that he did enter by one of them, and shall vouch, for that is not to the Writ, 6 E. 3. 46. *Cui in vita*, See also this is in, 44 E. 3. 31. Otherwise it is, when the Tenant saith, that he did enter by him and another, for there he cannot vouch, and the Writ shall abate, 48 E. 3. 29.

*I.* who was the wife of *H.* brought a Writ of Dower against *A.* who vouched *R.* the Son of *B.* because *B.* gave the Land to the Tenant, and the said *H.* her husband, and was ousted of the voucher, for this is contrary to the Writ, which supposeth that *H.* to be the husband of the Plaintiff. Also it goeth in Bar of the Plaintiffs Action, if she held joyntly with *H.* 2. E. 3. 31. But see *Fitz.* that it shall not overthrow the voucher, but the matter of Bar, for it is said there, that two women have had Dower of one husband.

*Dum sit infra ætatem*, supposing that he is in by the Demandant: The Tenant vouched a stranger, and good, because in by Title, yet it is contrary to the Writ, 35 E. 3. But it is holden, 18 E. 2. Voucher 241. that he shall



shall be put to his Writ of *Warrantia Charta*, and shall not vouch.

Dower of the third part of a Mill, the Tenant vouched by a Deed which was of a void place, and the Mill was made after, and he was ousted of the voucher, because he might plead it to the Writ, 35 E.3.

In a *Præcipe* of a Mannor except twenty Acres, the Tenant may well vouch of the whole Mannor, because it is not contrary to the Writ, 41 E.2. 23. see for this, 10 E.3. 11. 19 E.3. *Voucher* 123.

*In what Writs Voucher doth not lye.*

**A**dmeasurement of Pasture, the Tenant said, that T. Lord granted to him Common for a hundred Sheep, and vouched him, and good, H.3 1. H.1. but see 32 E.1. *Voucher* 303. that where the Plaintiff was seised of his Common the day of the Writ brought, that the Tenant could not vouch his Feoffor of the land, because he was in by wrong: But see T. E.1. *Admeasurement of Pasture* 11. that the Tenant shall vouch in this Writ, but not in a *Quod permittat*, in the *Quibus*, by Herle, 32 E.3.

*Quod permittat* of Common in Grosse, the Tenant vouched as land discharged, and was ousted of the voucher, because it is another thing. Also no Proces lyeth upon a voucher upon default at the Summons: And see 12 H.3. *Voucher* 282. In a *Quod permittat*, of the nature of *Mortdancester*, supposing that his Father dyed seised, the Tenant vouched T. by his Deed, bearing date before the death of the Father of the Plaintiff, so before the Action accrued, &c. for which cause the Tenant traversed the dying seised of the Father, &c.

In a *Quod permittat reducere cursum aqua*, which such a one *divertit*, the Tenant for life vouched him in the Reversion, and was ousted of the voucher, but he shall have ayde (note, the Writ was not good.)

*Quod permittat prosternere molendinum quod B. pater A. levavit*, the Tenant was received to vouch, 31 E.1. (See here it was not his wrong.) See 30 E.3:26. contrary in a manner.

A Writ of Entry, *De tertia parte piscaria in aqua de H.* The Tenant vouched, and received, 1. E.1. *Brief* 861.

Voucher doth not lye in a *Nuper obiit*, 34 E.1. and a Demurrer upon it is peremptory to the Tenant, so awarded, that he should not vouch, 30 E.1. and 7 E.3. 15. *Age* 111. the reason is given, 34 E.1. because the Demandant in that Action shall not plead with a stranger.

A Writ *de Secta faciend. ad Curiam de hundred*. The Tenant said, that he held of the Bishop of S. and was received to vouch him, 6 H.7.

*Quo jure*, the Tenant was received to vouch a stranger, 16 H.3.

*Rationabilibus divisio*, against Tenant in Dower, she vouched the heire in Reversion, and the vouchee being present did enter into the Warranty, 11 b.3.

*Terminum qui preterit* in the *Per*, the Tenant vouched a stranger out of the degrees, and was received by the Court, 28 H. 3. vi:44 E:3:acc.

*Rationabili parte* against B. and others, by severall *Præcipes*, they vouch B. party who was present, and did enter into the warranty, and pleaded, 18 H. 3.

*Secū ad molendinum* in the *Debet & solet*, the Tenant did vouch his Feoffor; alledging that he held discharged, and was ousted of the voucher, for the Suit doth not lye in extent, and proces cannot be made upon that voucher, 13 E:3. see t. E. 1. *Voucher* 246. It is said, that this Suit is a Service; so *transit terra cum onere*, for which cause he shall not vouch, nor by a warranty expressed in the Deed.

Voucher doth not lye in a Writ of Entry in the *Quibus* for the Disfeisor, nor in a Writ of Entry in the nature of an Affise, 11 R: 2. and 12 R. 2. *Voucher* 82.

In Attaint, the Feoffee Tenant cannot vouch, for no mean time adjudged, yet it was upon a Writ, in which voucher did lye. *Fitz.* That he vouched one named in the Writ who had pleaded Non-tenure, 10 E: 3. 21.

In *Cessavit* in the *Post*, the Tenant was received to vouch, yet the vouchee cannot defend the Tenancy, nor render the Arrearages, nor find sureties, 14 E. 2.

*Dum fuit infra atatem in primo gradu*, the Tenant was suffered for to vouch, because he is not in by wrong, yet it is contrary to the Writ, 35 E:3.

Lease for life of twenty shillings rent, a woman recovered the same in Dower by default, he brought a *Quod ei desorcent*, and vouched according to the Statute and recovered by default. The woman brought a *Quod ei desorcent*, the Tenant vouched and good, yet the Statute gives it to the Demandant, but now he is in the same case as he was, when he himself brought the *Quod ei desorcent*, so he shall vouch before Title made, and the woman now Demandant, not, 31 E. 1.

See 9 E:3. 22. *voucher* 16. That the Plaintiff in a *Quod ei desorcent* did vouch without shewing cause, and that it is no Counterplea to disprove the Title of the Vouchee, as his Release after the Recovery. And also when the Vouchee appears, the Recoveror shall not plead the Release, but it behoves him alwaies to maintain the Title of the first Recovery, because now he is as Demandant: But at the first it was said, that he might have pleaded the Release against the Demandant in the *Quod ei desorcent*.

Dower, the Tenant doth vouch the Heir who made default after default, the Demandant confessed that he had Assets, for which she recovered against him, and the Tenant held in peace; the Heir restored in Disceit against one, because not summoned: The woman sued a *Scire facias* against the Tenant upon the whole matter, he cannot vouch because it is a judiciall Writ: Also the Warranty is extinct, because he vouched once,

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and



and had execution; and it was his own fault, because he did not see that the Writ was executed, &c. 4 E. 3. 36.

No voucher, nor Aide-prayer lieth in a Writ of Intrusion of his own Intrusion, 3 E. 2. Aide 162. 2 E. 3. Voucher 49. And there it is said, that in Dower, nor in Mortdancester the Abator shall not vouch, although that the Statute had never been made.

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VI. *Where one shall vouch twice for the same Land, and recover twice in value.*

**A** Man who hath ten pound rent out of the land of a stranger, doth release all his right, &c. and binds him to warrant the land, and the rent denied, his wife brings Dower of the rent, the Tenant may well vouch and recover in value, and if he be impleaded of the land, he shall also vouch by the same Warranty, and shall recover in value for that also, 45 E. 3. Voucher 72. So see Voucher upon a Release which went only by way of Extinguishment.

One hath execution of lands in value whereof the Vouchee was seised by disseisin made to I. S. now if I. S. recover that land, the Tenant shall recover in value *de novo*. But it was said, that the Vouchee might maintain the Title, and that I. S. did recover by wrong. Also it was said there, that he who recovereth in value lesse then he lost, that the other shall not have more upon his suggestion, after that he hath now more, &c. he shall have a new extent, &c. 30 E. 1. Voucher 297. But see, 17 E. 3. 12. That acceptance of any land in value, shall conclude the party.

Where the Heir of the Vouchee hath Assets in Dower, the Demandant shall recover against him, and the Tenant shall hold the land in peace; And if the same land be evicted from him by the Heir it self, who lost in the Writ by default, where he was not summoned: The woman shall have a *Scire facias* against the Tenant, &c. and he is without remedy, because he had the effect of the Warranty, and the avoiding of it his default, 4 E. 3. 36. *Scire facis* 140.

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VII. *Where the Queen shall be vouched.*

**I**N Dower, the heire being Vouchee in the Wardship of divers, and part of the lands in the Wardship of the Queen, the plea shall stay till he sue to the Queen, 21 E. 3. 53. So 14 E. 3. Voucher, the Demandant was put to sue to the Queen who had parcell of the land of the Ward Vouchee. Also the Demandant could not aver that the Queen had not any of the land, for it is all one as an Aide-prayer of the King himself, because it is

as his Possession. But 5 E. 3. 60. and 22 E. 3. 3. Proces was made also against the Queen in such case, and *Alias*, and then Proces to summon him in the land which he had in Ward the day of the Voucher, upon averment of Assets.

And see 17 E. 3. 65. That the heir shall vouch in the Ward of the King, Queen, and others, and Proces shall be against them all, but the King & *interim sequend.* against him, see 19 H. 6. 6.

VIII. *VVhere the Lord and Villain shall vouch.*

**A** Writ against the Lord and Villain, the Lord may well vouch *Cum villano ab omni beneficio libertatis excluso*, but generall Voucher shall be an Enfranchisement: And this is to be understood of the Purchase of the Villain, and when they are both named in the Writ, and when the Lord is present in Court, 33 H. 6. 1. *Voucher* 40.

See 1. E. 1. *Voucher* 295. Where such a joynt-Voucher was not suffered, because they cannot be Joynt-tenants of the purchase of one, for which cause the Lord did answer as Tenant of the Freehold: And the Villain, (the protestation made as before) by his sufferance did vouch the Feoffor, and well, and that was received, 17 E. 3. Aff. 19. agrees, that the Villain alone shall have the Voucher in this case, and so saith *Wilby*, 18 E. 3. 19. So one shall vouch where the Freehold is in another.

IX. *VVhere one shall vouch, and shew severall bindings.*

**A** Writ of right of a hundred shillings rent, the Tenant vouched 7. and for all but one farthing, bound himself by his Demesne land, and for the farthing to the Reversion of it 5 E. 3. 67.

See 7 E. 3. 6. where in Dower in four Towns, the Tenant did vouch the heir within age, and shewed the Deed of the Ancestor in three Towns, except five pence of rent, and for that he bound himself by Reversion, and well; but a Reversion shall not bind an Infant, and the Vouchee shall not take advantage of it, that he doth not shew the binding according to the voucher, but that is to the Demandant, and in bar as to parcell, as to the vouchee.

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X. *where*



X. *Where the Tenant shall vouch after he hath pleaded Non-tenure in Bar, out of his Fee, to the Assise.*

**F**ormedon of a Rent, the Tenant shall vouch after that he hath pleaded, out of his Fee, because that is no bar, but a demanding if the Tenant be answerable without shewing a Deed, and that by *Herle*, 3 E. 3. 36 *Voucher* 194.

Assise against two, the one pleads to the Assise, the other in bar, the Plaintiff saith, that he who pleads to the Assise is Tenant, for which he appears and voucheth the other, and well, for the Plaintiff by his plea hath given him the Tenancy, 8 E. 3. 42. The Book is, that he shall not vouch, but that the Assise shall be awarded, as if the other had said nothing upon the plea to the Assise, *vi. 8. Ass. 19.* he shall have the voucher.

Dower *unde nihil habet*, the Tenant saith, that she hath recovered ten acres for Dower of one 7. and not allowed, because a stranger: So out of the Statute, for which cause he vouched, and well: So alwaies after a Plea to the Writ, 12 E. 3. *Dower* 89.

XI. *Infinite Cantells to delay a man by Voucher, or to bar a man.*

**I**f a man of full age be vouched as within age, and makes default at the *Venire facias*, for the tryall of his age, no proces shall issue forth, but Distresse infinite, and this is the course, by *Paston* 15 H. 6. *Voucher* 34.

But this is when issues are returned, for upon a *Nihil* returned, a Petite Cape, and *sequatur sub suo periculo* shall be awarded, 14 E. 3. *Proces* 45. and 45 E. 3. 23.

XII. *Pleas for the Vouchee, or for the Demandant to abate the Voucher.*

**Q**uod ei de forceat by Tenant in Dower, the Heir was vouched as of full age: It is no plea for the Demandant to say that he is within age, and demanded Judgment if without Deed, because he is supposed of age, and he is not vouched in any Ward for which, &c. 50 E. 3. 25. *Voucher* 79.

Voucher of two did abate by the death of one returned; if the Tenant will not aver his life, he shall be driven to revouch the Survivor, and the Heir of the other, 17 E. 3. 41. *Voucher* 90.

In Dower, the heir vouchee, did appear by his Guardian, and upon debate betwixt him and the Tenant, if he be out of Ward the day of the voucher, the Demandant could not presently recover, which he vouched in the same County, 17 E. 3. 47. *Voucher* 91.

The Demandant may well challenge a Revoucher to be without cause shewed, 30 E. 3. *Voucher* 104.

*Pracipe* of twenty acres, the Tenant saith, that he hath but ten acres, and voucheth, and well, and it shall be intended of the entire demand, but if the vouchee extort Warranty of parcell, then the Demandant shall have Seisin of that, not before: But his Challenge by protestations shall be entred now, for the vouchee shall be summoned of the whole &c. *Fitz.* See here, that where one is vouched of twenty acres, and a binding shewed but of one, yet he hath not failed of his voucher, 19 E. 3. *Voucher* 123.

XIII. *Pleas to abate Voucher by the Demandant, or Vouchee.*

The Heir vouched in the Wardship of *B.* in Dower, *B.* may well challenge the Voucher, because there are divers Guardians, &c. which are not named, &c. 22 E. 3. 1. *Voucher* 132. 8 E. 3. 15.

*Pracipe* against a woman, she may well vouch her self and her husband, although the Action be brought against her as a single woman, because he might be covert afterwards, 25 E. 3. 45. *Voucher* 142.

The Tenant voucheth *A.* who voucheth *B.* and at the Grand Cape against him *B.* appears, and *A.* is esloined, and day given to the Demandant, without mentioning of *B.* yet the Demandant cannot have Seisin upon this discontinuance, although it is said, that he is not to look that process be well awarded against the vouchee before he enter into the Warranty, 8 E. 3. 7. *Voucher* 155.

The vouchee voucheth over one *H.* the Demandant alledgeth that there are many of the name, for which at his prayer he was driven to give certain addition to the party, 10 E. 3. 37. *Voucher* 174.

Dower, the Tenant voucheth *J. T.* and *A.* his wife, and three Parceners and recovers the fourth part against *J. T.* and his wife by default, and now a new Writ by the said woman and her husband, the Tenant doth vouch the three Parceners, and *J. T.* Tenant by the Curtesie. Now the Demandant doth alledge the first Recovery: So in vain to vouch *J. T.* against whom he hath recovered in value for her portion before: yet the voucher stood: See also there that *J. T.* shall render in value for the debt of the others, the whole by the first recovery had against him, so he need not to be vouched again, 26 E. 3. 59. *Voucher* 305.

A man vouched as of full age, where he is within age, appeareth, and sayeth that the plea may stay, the Demandant shall take no advantage of the false voucher, 18 E. 3. *Voucher* 228.

XIV. *What*



XIV. *What Pleas the Tenant or Vouchee shall have after the Voucher over, and where the Voucher shall be peremptory.*

**T**He Tenant for life vouched him in the Remainder, where he had prayed in aide before of the Donor, and was ousted thereof: And because this voucher is in lieu of Aid-prayer, with which the Demandant shall not be twice delayed, the Demandant did recover, 14 H. 6. 25. *Voucher* 31. *Fitz.* *Quare* a better reason. And see 15 H. 6. where the Demandant did recover, because the Tenant could not vouch him in the Remainder, from whom he had nothing, and to whom he was not Tenant.

Note, where the voucher is over for sufficient cause not shewed, &c. so as the voucher doth not lye in the case, and is ousted without Counterplea, tryall, or Adjournment, he shall be put to answer, and shall not lose the land, 14 E. 3. *Voucher* 180.

Guardian in Fait not suffered to vouch his Lessor in Dower, was put to other answer, 8 E. 2. *Voucher* 260.

Demurrer upon Counterplea of the voucher is peremptory to the Tenant, but not to the Demandant. So is it of a tryall by verdict. Demurrer upon the binding to Warranty, is peremptory to the Tenant, and to the vouchee, Demurrer upon a voucher, peremptory to the Demandant: As where the Tenant voucheth to save the tail of another Estate, 7 E. 3. *Voucher* 153.

So where the Demurrer is adjourned to another Term, this is peremptory, which is not where the voucher is to the same Term; 11 H. 4. 22. 8 H. 7. 7. where it is said, that the Statute which wills that he be put to another Answer, is to be intended before Adjournment, &c. 40 E. 3. 14. *Voucher* 59.

XV. *Pleas after the Voucher is ousted, and where it is peremptory.*

**N**Ote that after the plea discontinued, or miscontinued after voucher, the Tenant shall not vouch a stranger, but may well vouch again the same person, and by the same name and Surname, 8 E. 3. 7. vi. 5 H. 7. 40. That the Tenant may waive voucher at all times before, that the vouchee is summoned, and plead in bar, but not after the vouchee summoned, 14 H. 6. 7. agrees.

The plea is stayed for the Nonage of the second vouchee, and at special Resummons against the Tenant and the first vouchee, the Tenant may well plead a Recovery of a stranger after the last continuance, and every plea in bar which is of puisne time, as a Release, &c. So the vouchee, who also

also may plead the death of the Tenant, that the Demandant hath taken a husband, &c. Outlawry, Excommengement: So the pleas be of later time. But *Brian* saith, that the Termor shall not plead to the Writ, but in bar, 5 H. 7. 4. *Voucher* 45.

Vouchee pleaded that the Demandant had another Writ depending, if it be purchased after the entry into the Warranty, it is a good plea, otherwise not, by *Finchden*, 41 E. 3. 11.

After voucher in a Mortdancester, the Tenant may well waive it, and plead to the point of the Writ, 31 E. 3. *Mortdancester* 48.

If the Demandant Counterplead the cause of voucher, the Tenant may waive that voucher, and vouch at large, 17 E. 3. 46. *Counterplea of Voucher* 41.

If the Demandant be at issue with the Tenant upon Counterplea of voucher, he may waive it, and say, that the voucher shall stand, for that shall be the Award against him, 4 E. 3. 56. *Counterplea* 66.

But if the Tenant shew cause of voucher to the vouchee, he shall not waive it, and shew other cause, 11 E. 2. *Voucher* 261.

**XVI. Where the Tenant shall plead before the Voucher, upon paine of losing the Warranty, and where not.**

**O**wer of the Moyety &c. The vouchee shall not compell the woman to shew cause of such Demand, for that belongs to the Tenant, 10 E. 3. 35. *Voucher* 173 But see 13 E. 3. *Voucher* 29. where she was driven to shew cause of such demand to the vouchee, *Voucher* 10.

If the Demandant hath Judgment to recover, and the Tenant over against the vouchee, if the Demandant doth not sue execution, but bring a new Originall, the Tenant may vouch again, but if there be default in the Tenant, as that he sue not so soon against the vouchee, as if he sue at the *seignatur*, but not that Proces now, although the Demandant be not Execution, but a new Originall, the Tenant shall not revouch, because he hath lost the Warranty by his default, and shall not have more advantage, then if the Demandant had sued execution of the first Judgment, where no Judgment should be for the Tenant: But if he were not Tenant of the land at the time of such voucher: It was said, that such default of suing should not hurt him in a new originall now against him as Tenant, 10 E. 3. 21 *Counterplea de garr.* 14.

Voucher of two acres maintained by a Deed of two Sellions, which make but one acre, with speciall entry, 9 E. 3. 39. *Counterplea de garr.*

He who hath but as Joynt-tenant with his Wife, whether he be Tenant or Vouchee, shall not vouch alone the Feoffor, &c. because he cannot recover according to the first Estate, and in the first case, he might abate



abate the Writ. Also where he is Vouchee, he may be helped by special pleading, 10 E.3.52. *Counterplea de garr.* 15.38 E.3. acc.

See 44 E.3.31. Entry 52. and 36 E.6. Entry 48. Where in a Writ, supposing the Entry by two, it is no plea that he entered by one, because he may vouch him: But where the entry is supposed by one, if he enter by him and another, that shall be shewed, otherwise he shall not vouch, 48 E.3.29.

*Præcipe* of Land in four Townes, where the whole is in three, the fourth being a Hamlet of them, if the Tenant vouch generally, the Vouchee shall abate it. So where Tenants in Common voucheth joyntly, or Joynt-tenants severally, but that shall be before entry into the Warranty, 22 H.6.6.22 E.3.8. *Voucher* 137.5 E.2. *Voucher* 251.

XVII. *Where the Tenant shall plead to the Writ upon pain to lose the Warranty.*

**P***Recipe* of a house and six acres of land, the Tenant voucheth, and for cause sheweth to the Vouchee a Deed of the house, *Cum pertinentiis*; And it was holden, that that doth not maintain the Voucher, but for the house, 4 E.2. *Voucher* 244.

The Vouchee shall not plead to the form of the Writ, 5 E.2. *Voucher* 150. He shall plead Mesnourmer of the Demandant, 7 E.2. *Voucher* 159. Or that the Demandant hath not made him heir to him who was last seised, 6 E.3.49. but he shall not traverse the Entry, &c. 6 E.3.47. The Vouchee cannot plead the death of one of the Tenants, 29 E.3.62. *voucher* 312. And of these matters peremptory, See 22 E.3.1 and 22 H.6.12.

XVIII. *Pleas for the Vouchee to the Demandant:*

**T**he Vouchee shall plead a Release to him, or to another whose Estate he hath, and all matters of force, see peremptory, and pleas before Voucher, 5 H.7.40. 22 H.6.12. 10 E.3.55. Where he pleaded to the Action in a Writ of *Formedon*. 7 E.3.9.

The Guardian of an Infant Vouchee shall plead every plea, 46 E.3.20. *voucher* 74. And shall say, that the Demandant in Dower hath esloined the Heir, 17 E.3.58. and 8 E.3.71.

The Vouchee shall alledge Nonage of the Demandant; pray that the plea may stay, 3 E.2. age 133.

Upon a *Cui in vita* of the Seisin of H. his Mother, the Vouchee may well say, that his Mother is named M. yet the Tenant shall not have that plea

plea after the View, 44 E:3. *Estoppel* 8. nor the Vouchee shall not have it after the View, &c. 15 E:3. *Estoppel* 238.

The Heir vouched in the Ward of *A.* now *A.* shall not say, after the entry into the Warranty, that he hath nothing in the Guardianship, because he entred as Guardian, 18 E:2. *Estoppel* 268.

The vouchee shall not challenge the form of the Writ, 3 H.4:13.

The Vouchee may plead a Recovery of a stranger, 41 E:3.11.

A man brings a *Pracipe* against *A.* and another of the same land against *B.* who voucheth *A.* who pleaded this matter, and was not allowed, because the Tenant had affirmed it, 46 E:3.33. So the death of the Tenant or Demandant, 30 E:3.

And variance betwixt the Originall and the *Pone*, upon a removing of the plea out of the County. And the omission of one of the blood in right, and a Conveyance made by a Bastard, &c. may be challenged by the Vouchee, 1 E. 1. *Brief* 861. The case was, *Pracipe quod reddat tertiam partem Piscaria in aqua*, &c. the Vouchee challenged it for incertainty, whether he demanded the Fishing, or the Soil, at the last he said he demanded the Demesne.

The Vouchee may alledge that the Tenant had nothing at the day of the Writ brought, or of the Voucher, 9 E:3.

And the Vouchee shall have the sight and hearing of all the Deeds upon the Demands declaring against him, 7 E:3.6.

And the Vouchee may say, that the Demandant hath made the same Ancestor in one Deed to bind him to the Warranty, Grandfather, and in another Deed Cousin, and for that the Writ shall abate, 13 E:3. *Joynder in action* 29.

### XIX. Voucher in Assise of Novel Disseisin.

**A**ssise against two, one taketh upon him the whole, and voucheth the other, who present in Court, entreth into the Warranty, 13 E:3. *voucher* 19.

Assise against husband and wife, and others, she being received upon the default of her husband, voucheth one of the other, who being ready entreth into the warranty, and good, because he is named in the writ, although he be out of Court by his default, 133 E:3. *voucher* 117. and 119. The Husband vouched in such case after he had not default, and she received.

Assise against two, one pleads to the Assise for the third part, the other pleads a Recovery in Bar, the Plaintiff chose the first for Tenant of the whole, who vouched the other, and good, 8 E:3.42.8. *Ass*:19.

Husband and wife plead Joynt-tenancy by Deed, and afterwards she being received upon the default of the husband, vouched the husband, and good, 25 *Ass*:14. *voucher* 204.

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Affise of a Rent, the Tenant vouched his Feoffor &c. not named in the Affise, and the Demandant did counterplead it by the Statute, 16 H. 6. Counterplea of Voucher 6.

If one named in the Affise, and present, be vouched, and will not willingly enter in the warranty, he shall never be compelled to it in an affise, 20 E. 2. Gar. 84.

See 18 E. 2. Damages 14. & 17 E. 2. Error 90. where in an Affise the Tenant did recover in value against the disseisee, who by an agreement did warrant the Land unto him.

**XX. Where voucher shall be without shewing a Deed, where not.**

**I**N Dower, the Tenant shall not vouch the heir of the husband within age, without shewing a Deed, otherwise if he vouch him as of full age, 13 E. 3. voucher 13. 50 E. 3. 25. vide 48 E. 3. 5.

The Tenant did vouch two brothers, one heir at the Common Law, the other heir by Custome, and both within age, and shewed special cause, 15 E. 3. voucher 22.

A woman received by the default of her husband in a Formedon vouched the husband, as assignee of the Conusee of the husband by Fine, without shewing any thing, yet Schard said, that the assignee shall shew both the deeds, 13 E. 3. voucher 27. 8 E. 3. 61.

A man shall not vouch by Release or Confirmation, without shewing a Deed, otherwise it is, where the Warranty doth begin, by Livery, be the estate fee-simple. or fee-tail, 11 H. 4. 21. 40 E. 3. 22.

A woman upon default of her husband vouched her self and the husband, to save the Tail, as assignee of the Donee. and the opinion of the Court was, that he shall shew the Deed of binding to warranty now to the Demandant, for otherwise it shall never be shewed, and it behoves that there appear cause to delay the demandant, 10 H. 7. 22. 11 H. 4. 7. 16 H. 7. 13. But see that he shall not shew the Deed upon voucher of himself, 40 E. 3. 14 and 22.

Donee in Tail doth vouch the Donor, who re-voucheth him to save his Reversion, and well, without shewing a Deed, because he is another person, 16 H. 7. 13. he shall shew cause.

Finchden saith, 40 E. 3. 23. that the demandant shall not have answer unto the Deed shewed by him who voucheth himself to save the Tail, so it is in vain to shew it.

The Tenant cannot vouch an infant as heir in a Formedon without a Deed, if he doth not say, that he voucheth him for homage ancestrell, or exchange, 4 E. 2. Voucher 245.

Herle saith, that a man shall never vouch as assignee, without shewing a specialty, 4 E. 3. Itin. Derby Counter-plea of voucher 95. See 14 H. 6. 4. See

6.4. See 2 E. 3.29. That the Deed of assignement shall not be shewed to the party demandant.

A man shall not vouch as assignee of the King, without shewing a Deed, 14 E. 3. *Voucher* 108.

**XXI.** *Where the Tenant shall vouch after Aid-prayer, and where he of whom he hath aid.*

**N**Ote, that he, who prayeth in aid, as Lessee for life, may vouch a stranger at another day, notwithstanding the aid-prayer, if not upon the default of the prayee he be commanded to answer alone, 18 E. 3. *Voucher* 7.

But if the prayee appear, the Tenant shall not refuse the joining in aid for the vouching of a stranger; for they two may vouch, and upon his default, the Tenant may vouch a stranger, as it is said, 9 H. 6. 3. and 4. 22 H. 6. 40.

Two Coparceners make partition, one and her husband being entered, prayeth in aid of the other, who maketh default, the husband maketh default, she received, voucheth her self, and the other to save the Tail, 13 E. 3. *Voucher* 14.

After aid-prayer of the King, which is in the place of voucher, the Tenant shall never vouch a stranger, 15 E. 3. *Voucher* 21. 9 H. 6. 3. 9 E. 15. *Voucher* 160. 14 E. 3. *Voucher* 108. and 3 E. 3. 15. contrary, there shall have the voucher after a *Procedendo*, and therewith agrees, 15 E. *Voucher* 111.

If the Heir be vouched in the ward of the King, who demiseth, and the other King sendeth a Writ to do Right, by that it is intended, that that he remains Guardian, for which cause the Tenant could not vouch the Heir, as in the Wardship of another, it was in Dower, and it was adjudged, that the woman should recover against the heir, if he had &c. and she shall not have a writ for the Land, which is in the Kings hands &c. See the Case, 1 E. 3. 61.

Tenant for life being ousted of aid of his Lessor, vouched him in the remainder, and was ousted of the voucher, because the same is but in the place of aid, for voucher doth not lie. Tenant by the courtesie shall vouch, as it is but aid-prayer, because he shall not recover, 14 H. 6. 25.

One parcener shall not vouch the other, who comes not in upon aid-prayer, after Partition, because the prayer was also in the place of voucher, 15 H. 6. *Voucher* 33. 22 H. 6. 40. But see 20 H. 6. 2. and 40 E. 3. 22. where one Parcener upon such default shall vouch a stranger, or her self, who is Tenant to save the Tail, and shall have all such vouchers, as her self shall have upon joyning with her, which she should not have without aid-prayer.



The Tenant cannot vouch him in the Reversion, who makes default upon the aid-prayer aforesaid. because it shall be intended for the same cause of reversion, 22 H.6.40. and 7 H.4.15. See agreeing with that, 9 E.3. 39. and P.18 E.3. *Voucher* 7. But such voucher shall be received, 11 H.4. and 32 E.3. *voucher* 99. it is said, that if he in the reversion be ready to enter into the warranty upon the like voucher, he shall be received, but otherwise the demandant shall not be delayed.

A woman joint-tenant for life with her husband, being impleaded did pray in aid of his heir, and upon default, did vouch him, and was ousted of the voucher, 4 E.3. 39.

Tenant in Dower shall not vouch the heir who hath prayed aid; for her Election is determined, 10 E.3.57.

XXII. *In what places the Tenant may pray that the Vouchee be summoned, and where he shall be summoned in Ireland.*

**I**F the Tenant prayeth, that the vouchee be summoned in *Wales*, the Voucher shall abate, but if in *Wales* and *Essex*; the Summons shall be altogether in *Essex*, so of a County Palatine, 18 E.3. *Voucher* 5.

See so of *Ireland temp.* E.1: *voucher* 239. and 26 E.3.5: where the vouchee was summoned in the County of *Lancaster* alone, *Voucher* 30:6. See *temp.* E.1. *Voucher* 239: The Tenant prayed, that the vouchee be summoned in *Ireland*, and disallowed, so in every Case, if not that he vouch for exchange, by *Berry*.

Voucher in *York* and *Durham*, Summons was in *York* for the whole, so 13 H.4: *voucher* 39. for Summons in one County shall serve for all, 36 H.6. *Voucher* 49.

But where two are vouched, and the one in *Durham*, and the other in *Chester*, Proccesse shall be also awarded to the Prince or his Deputy, because one shall not answer alone, 49 E.3. the plea shall be removed out of *Chester* upon the voucher, and see 13 E.3. *voucher* 18. that upon the Plea removed from thence upon such forreign voucher, the vouchee shall not be summoned upon the Grand Cape *ad Valenciam* from thence, before that the extent of the Land in demand be returned into the Common Pleas, out of the Court of *Chester*.

Where the Tenant prays to summon the vouchee in a forrein County, it is no plea, that the demandant hath assets, where the Writ is brought, *Fisher* contrary, if he should be summoned in *Chester* &c: 32 E.3: *Voucher* 97. and 3 E.3: *Itin. Nottingham*, but there *Herle* held, if he should be summoned in two Counties, the Demandant shall have the amerciamment, as before, if he hath assets where the writ is brought, although not to the value, yet the Tenant shall recover the rest in the other Counties, where he was not summoned, 4 E.2. *voucher* 248: agrees, because Summons in one County shall serve for all. But

But if the Sheriff return *Nihil* in that County, then he shall be summoned in the others, 3 E.3: *voucher* 198.

And upon the Counterplea of voucher found against the Demandant, he shall not averre assets where the Writ is brought &c. 36 Aff.6. *Voucher* 206.

A Writ of Right in ancient Demesne, the Tenant vouched in *London*, and had a speciall *Supersedens* out of the Chauncery to those in ancient demesne to surcease: The Chancellour said, that this voucher ought not to be suffered, because Land at the Common Law shall not be rendred in value for Land in ancient Demesne, 35 E.3: *voucher* 316.

Note, upon *Nihil* returned in the County where the Writ is brought &c: the Summons shall be in all the other Counties, and the Demandant shall not averre Assets in one of them, and where the heir is vouched in the Wardship of many, the Summons may be in the severall Counties for each of them.

Recovery in value shall be onely in the County where the voucher is, if not of Land descended, or purchased after the voucher 13 E.3: *Recovery, value* 3: E.3: *Isin. Not. voucher* 198.

**XXIII.** *Where a man shall be in course of Ancient intail by voucher, or brought to have the warranty Paramount, or aid Paramount.*

**I**F the Father leaseth to his son for life, the Son shall have warranty Paramount, for the Fee is executed.

But if my Uncle gives Lands to my Father in Tail, who dieth, and the Uncle dieth, I heir to both of them shall vouch my self to save the Tail, and then shall have the warranty Paramount, not before, because the fee is in suspence 18 E.3. 52. *voucher* 11. See 41 E.3. *voucher* 69.

But see 18 E.3.6: where the Son Donee of his Father could not vouch himself to save the Tail: See the difference against 25 E.3.17. where the Son did vouch himself for a Remainder in Tail, by the Father unto him.

A woman was received to vouch her self and her husband to save the Franck-marriage, and ousted; for she in Court shall have every voucher, but it was said, that if the ancestor of the husband had given the Land, she should have had the voucher, 5 E.3.40. the voucher granted, 5 E.2. *voucher* 252.

Note, the heir Lessee for life, where the remainder is over, shall not vouch himself to save the estates, also he shall not have the warranty Paramount, yet he did alledge a Fine with warranty to his Father, it was his folly to take the Lease, 7 E.3.61.

But, note, the issue in Tail may well vouch himself as assignee of the Donor.



Donor to save the Tail, where there is the same remainder, although he hath Fee in Reversion, 32 E.3. *voucher* 96.

See 50 E.3.2. Where the Tenant did vouch himself, as assignee of R. Conusee of his Father, who rendred to the Father for life, and good, although there did not appear no warranty in the Fine, 25 E.3.17.

One Parcener did vouch her self, and her Sister, to save Tail, the who made default at the aid-prayer, 40 E.3.23.

Husband and wife vouch themselves, and the issue of the Sister of the wife, to save the Frank-marriage given by the ancestor of the wife, 4 E.3.49. *voucher* 177

The eldest Son Feoffee did vouch himself and his younger brother, heir by the Custome, and good, but if he re-infeoff the Father, and the youngest Son, and to the heirs of the Father, now he shall not have such voucher, because he is not in by the Father, and the warranty is gone, 40 E.3.14. 41 E.3.9. See that here he might have the warranty Paramount without that voucher.

If the Feoffor take back in tail, and voucheth the Donor, he shall revouch him, otherwise, if he take back an estate in fee; So if A. infeoffeth B. who infeoffeth C. now C. shall vouch A. as assignee of B. but if he re-infeoff B. the first warranty is extinct, and also his warranty to C. and shall not be revived by the voucher of C. 16 E.3. *voucher* 87. 14 E.3. *voucher* 106.

The husband Feoffor takes back an estate to him and his wife in fee, and leaseth for life, and being received upon his default, voucheth himself to save the joint estate, as assignee of the Feoffor, and he could not be admitted to the voucher, because the wife had nothing, living the Lessee of the husband, 19 E.3. *voucher* 122.

Tenant by the Courtesie enfeoffeth a stranger, who enfeoffeth the heir of Tenant by the courtesie, who dieth, the heir impleaded by the heir of the wife voucheth a stranger, who doth revouch him, and good, 4 E.3. *voucher* 157. 3 E.3.51. See the reason, because the Writ doth suppose the Entry of the vouchee, by the ancestor of the Tenant.

Lessee for life hath aid of him in the remainder in Tail, who was issue of the Donee, and heir of the Donor, and they vouched him, and well, 29 E.3.37. *voucher* 308.

#### XXIV. Where one may vouch as assignee, and who shall be said Assignee.

**T**HE feoffee of the husband doth re-enfeoff the husband and wife, they impleaded vouch, for the wife is assignee, and she shall revouch the husband, 32 E.3. *voucher* 95: 17 E.3.47. 43 E.3.7.

So two enfeoff one, and he doth re-infeoff one of them who voucheth

eth

eth him, he may well revouch them both, 11 H:4:40. and 20 H.6.2.

See in the first Case, that the wife being received shall vouch the husband as assignee, 13 E.3. voucher, 17. But there he ought to shew warranty as Assignees, and how assignee, so is 10 E.3.41.

But in 14 E.3. voucher 109. upon such voucher, the wife was not driven to alledge Seisin of him who assigned, nor to shew the warranty as assignees, but only that the Conuisee of the husband, did render the land &c: 5 E.3.2. acc: 13: she shall have Seisin of her husband before the fine &c.

The husband alone shall not vouch as assignee, where the Feoffment was to him and his wife, although she be not party to the suit, 19 E:3: Tenant in Tail, where the Remainder is over in fee, with warranty to them, their heirs and assigns enfeof 7. S. and die, his Executors do deliver the first deed to 7. S. who impleadeth, voucheth the Donor as assignee, *Quare*, for the Deed doth not belong to him, also the estate upon which &c: is suspended, 11 R:2: *De fine* 46: But see 46 E:3:4: that such Feoffee shall plead the warranty in Bar, but shall not vouch, vide 7 E.3.34.

And see there, that the assignee of the heir of the Donee, where the Warranty is to him, his heirs, and assigns, shall have also advantage of voucher or rebutter, as assignee of the Donee himself should have, 7 E:3:35. 6 E:3:38: & 55.

Also the heir of the assignee shall have as great advantage of warranty as the assignee himself should have, 10 E:3:9: 10 E: 2: Warranty 85. 13 E:1: *Gar*:93.

But *Schard* saith, 10 E:3:9: That the heir of the assignee shall plead such warranty in Bar, although he shall not vouch, *Thorp* agrees, 18 E.3:29.

The Ter-Tenant shall not vouch as Assignee of W: by Confirmation of the demandant to W: &c: but shall rebut, as a disseisor shall rebut, but shall not vouch as assignee, 10 E:3:41.

A feoffment to two, with warranty to their heirs and assigns, the assignee of the Survivor or his heir shall vouch by it, 14 E:3: *Gar*:33.

But assignee of assignee could not rely upon the warranty of the plaintiff, in Bar of an Assise, 24 E:3:10: *Bar*:41.

But if A. enfeof B: and he C. and takes back an estate to him and his wife and dieth, the wife as assignee of C: may well pretend the warranty against A: the Book is, that he shall not plead it, because they may vouch and so come to the warranty, 25 E:3: in a *Scire facias* against the husband and wife, *Gar*:41.



XXV. Where a man shall vouch himself, and where himself and another.

**T**HE Mother gave Land to her daughter and her husband, and to the heirs of the husband, and died, the husband and wife impleaded vouch themselves for this cause, and are received, 5 E.3: *voucher* 252. See 5 E.3.40: 21 E.3: 37: *Counterplea of voucher* 91.

Husband and wife vouch the husband, who enfeoffed a stranger, and took back to them, 39 E.3:9: *Counterplea of Voucher* 13.

*A: B:* and *C:* Parceners, *A:* enfeoffeth *B:* of her part, and dieth, now *B:* may well vouch her self, and her sister, as heir of *A:* 17 E.3:39: *voucher* 1.

A man having two daughters, gave Lands to one, and to her husband in Tail, she received in a *Pracipe*, after aid of her sister vouched her self, her husband and sister, 11 E.3: *voucher* 14. 40 E.3:22.

But where the husband is heir to the Donor, and hath discontinued and taken back, and a *Pracipe* is brought against him, he shall not vouch himself &c. 38 E.3.5. 19 E.3: *voucher* 122.

Otherwise it is of a woman received for default of the husband. See before *Gar*, & 5.E:3.

A man makes a Lease for life, the remainder to his Son, the Lessee vouched the Son, as heir of the Lessor, who vouched himself to save the Tail, yet he shall vouch for another estate, and it is said there, that although the vouchee had Fee, or if he who vouched him hath Fee, so as there was no Reversion in Tail, yet the voucher to save the Tail, stood, 5 E.3:24.

If one coparcener alieneth in Fee, and is vouched, now she is brought in to a way to have aid of the other by the warranty paramount not to recover *pro rata*, 8 R.2. *Aid* 115. & 29 E.3:37.

Note, where the Tenant voucheth himself and another, the Demandant shall have no plea to the warranty, because there is another who may, as Donees having the same Lands allotted to them again by *Hosebott*, being impleaded, vouch themselves and the other sister, where she ought to pray in aid, because in the estate of Partition, the demandant shall not challenge it, but the other sister, 4 E.3.49. *vide* 6 E.3:30.

One sister Feoffee may well vouch her self and the sisters, 40 E.3:14. 17 E.3:59. and there the *Mulier* being Tenant, vouched himself and the *Bastard*.

And the eldest Son Feoffee shall vouch himself and his brother, heir by the Custome, 40 E.3:14.

So one daughter Donee in tail, shall vouch her self and her sister, 35 E.3:9: *voucher* 142.

A woman taketh her Lessee for life to husband, they are impleaded, the

the husband takes upon him the whole, and voucheth himself and his wife for the same cause, 32 E. 3: *voucher* 102. So if she had infeoffed him before the Coverture 4 E. 2: *voucher* 246.

W. levieth a Fine to R: who renders the Land to W. for life, the Remainder to B. his Son in Tail, the Remainder to the right heirs of W: who dieth, B: being impleaded, vouched himself, as heir of W. and assignee of R: 32 E. 3: *voucher* 96: & 100.

A man shall not vouch himself to save any estate, which is not Tail, nor a joint estate, nor a Remainder, nor the Estate of a stranger, when he cannot for his own estate, 7 E. 3. 19 E. 3: *voucher* 122: 38 E. 3: 5.

A Formedon against husband and wife, they vouch themselves, and two other wives, without other cause, and it was said, that one Parcener shall vouch the other without cause, as well as she shall pray in aid of her, but this is against the opinion of divers, 26 E. 3: *voucher* 304.

Two joint-tenants do infeoff the heir of one of them, and his wife with warranty and die, the heir impleaded shall vouch himself, and the heir of the other joint-tenant for that cause, 29 E. 3: 59.

**XXVI. *Voucher of an Infant in his mothers belly, where a Bishop, idiot, persons disabled.***

**D**ower against a woman, who claimed to be Guardian of an infant in his mothers belly, the Writ was good, not naming her Guardian, yet such an infant shall be vouched, 31 E. 1. *Brief* 843.

See that *Gard* 153. of the voucher 41 E. 3: 11: 9 H. 6: and such a woman with child, shall bar the heir apparent of Charters, claiming to the use of the infant, 41 E. 3: 11: *Bar* 207.

The Lord by escheat entred, but notwithstanding such entry, the infant, when born shall put him out, 9 H. 6. & 9 H. 7: 24.

The Lord shall have the Wardship, and shall be said Guardian of the Land, and of the infant in his mothers belly, *temp.* E. 1: *Gard* 153.

One voucheth an infant in his mothers belly (if God shall give him birth) if not, that he vouch A: heir apparent, but afterwards he vouched A: alone, 11 E. 3: *voucher* 13.

*Finchden* held the voucher next before good, and that Proceffe shall be made against the heir apparent, 38 E. 3: 25: *voucher* 58. But there *Thorpe* said, if there be no heir apparent, such an infant shall be vouched, and no Proceffe shall be, untill he be born, but 8 E. 2: *voucher* 217: contrary to *Thorpe*, and that he shall not be vouched without the heir apparent, in such form as *Finchden* said, because no proceffe shall be, nor no certainty of Resummons.

An idiot shall be vouched, and the plea shall stay, but a man attaint or convict, who hath not made his purgation, nor a man outlawed in personal action, shall not be vouched.

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Nor the plea shall not be without day by Vouches, where appears on certain cause of Resummons, and the Law respects that which is, not that which may be, 8 E:2. *Itin. Cant. Voucher* 237.

See 38 E:3:35. Where the Tenant did vouch T. Bishop, elect and confirmed, when the Temporalities were in the Kings hands not restored, and the Plea did stay untill, &c. Note, he did not vouch generall the Bishop that should be.

A Guardian shall not vouch in Dower, because he hath but a Chattell, 2 E:2. *Voucher* 211.

XXVII. Where the Tenant who is not Heir, shall vouch as Heir at the Common Law, and where he who is not Heir shall be vouched as Heir.

**T**He Tenant vouched her self, her Sister, and the Issue of the third Sister: It is no Counterplea that the Vouches are Bastards, where seised as Heirs, but it is good where all are Bastards, and the plea shall stay for the Nonage of one of them, 17 E:3:59.

A Bastard may well vouch without the right Heir, not the youngest Son, 43 E:3:3. See of the Bastard, 5 H:7:2. 32 E:3. *Voucher* 94.

The Daughter of the eldest Son shall not be vouched, without the Son of the whole blood, for the Warranty of the Father, 43 E:3:3. 20 E:3. *Voucher* 129. 38 E:3:32.

Before the Statute a man doth alien parcell of a Mannor descended of the part of his Mother, rendring four shillings, the Heir of the part of the Father, shall have the rent, because parcell of the Mannor, but the Heir of the part of the Mother shall be vouched with him, 5 E:2. *Avowry* 207. 31 E:3. *voucher* 88. Of Voucher of the Heir of the part of the Mother, see 7 E:3:66.

XXVIII. Where the Tenant shall vouch of another thing which is not demanded.

**I**n *Utrum* of a Rent, the Tenant shall vouch his Feoffor, as of Land discharged, 12 R:2. *Counterplea of voucher* 34. And see there, that it is no Counterplea, that the Feoffor was not seised, discharged.

Entry in the *Post* of Tenements in B. the Tenant saith, that R. seised enfeoffed B. who did enfeoff him of the Mannor of D. whereof the Tenements demanded are parcell, and vouched him, and good; and it is a good plea, that they are not parcell, 4 E:3. *Itin. Derby, Counterplea* 25.

**Affise** of a Rent-charge, the Tenant vouched B. who did enfeof him of the land discharged, 26 H.8. *Counterplea* 61. So in a *Formedon*, 10 E. 3. 20. and seised of the land, good *Counterplea*. So in a *Writ of Relief* of a Rent, 18 E. 2. *Counterplea* 113. *Servus ad Molendinum* in the *debet & solvit*, the Tenant cannot vouch of Land discharged, because it is a Service, 13 E. 3. *voucher* 116. See if the Patentee of the King of Land, shall have Aid of the King in the place of Voucher, in an Affise brought of Common in the Land, 25 Aff. Aid of the King 72. See the Book, that the Patent was, *Episcopo & successoribus*; And the Dean prayed Aid. *Stouff* Justice relyed upon it: Also the Patent was before the limitation in an Affise, and therefore challenged: So the better opinion of the Book is, that the Aid did not lye.

XXIX. Where one may be vouched as Heire, and bound to Warranty for another cause, and where he who is vouched for one cause, shall be bound for another.

HE who is vouched as Heir may be well bounden by his own Deed, if he be not vouched as within age, &c So where upon the death of his Vouchee, his Heir is vouched, for in these cases, the word (*Heire*) is materiall, for in the first Bastardy is *Counterplea*, and in the last he shall not vouch him who is not Heir, 22 E. 4. *voucher* 43. 16. H. 7. 13.

And he who is vouched generally shall be bound by his own Deed, and by the Deed of his Ancestor, 10 H. 7. 22.

If the Heir be vouched within age in Dower, and a Deed be shewed, he shall be bound by another Deed, for that was shewed only to the Court, and the Plea is not to stay in that Action. So he that voucheth by severall Deeds shall be bound by one, or by the Reversion, 7 E. 3. 6. 48 E. 34. 8 H. 7. 7. 11 H. 4. 20.

But he who is driven for to shew cause of the binding to the Demant, shall not bind the Vouchee for another cause, 11 H. 4. 21. 31 E. 3. *Counterplea of voucher* 88. 17 E. 2. *Counter.* 111. 7 E. 3. 54.

XXX. Where one shall be vouched in the custody of the Demandant.

IN Dower, the Heir of the husband was vouched in the custody of the Demandant alone, and good, and he was not put to Rebutt, because the Guardian cannot endow her self, if not by the Award of the Court: if it is no Rebutter, because it may be that the Heir hath not any thing in tail, which shall be declared upon the Voucher, 16 E. 3. *voucher* 116. And such Voucher admitted good, 10 E. 3. 26. the Demandant summoned to answer himself.



The Heir was vouched in the Wardship of the Demandant in Dower, and of another, to whom the Father devised land, untill the age of the Heir, and holden a good cause of Voucher, 27 E:3.3.

See 7 R. 2. *Dower* 149. 22 E: 3. 3. where the Heir Demandant upon Voucher did presently demand, what the Tenant had to bind him to Warranty, &c. And he shewed cause of Warranty by Exchange: And the Defendant said, she had nothing in the Wardship, upon which they were at issue, and she recovered her Dower presently, yet she her self was party to the Issue.

XXXI. *When one shall be vouched in the Wardship of the King, with others.*

**W**Here the Heir was vouched in the Wardship of the King, and others; The Demandant did aver that the King had nothing in the Wardship, and the Tenant was driven to answer to it: For *Hill* said, that if it be true, the Voucher should not stand against the others, but that he should lose that portion of the land for which he had vouched, *Quare* 21 E:3.53. and 105.

And see in that Book, that the Plea shall stay untill the King be advised, 1 E:3.13. not in Dower, but 2 H.4. it is agreed by the Justices, that he shall not have the Voucher of the others, after the *Procedendo*, because where the King is Guardian, it shall be intended Guardian of the whole land, and from the King the Heir shall sue his Livery, &c. But see the contrary to that, 17 E:3.65. 21 E:3.53. 26 E:3.6.

Where an Infant is vouched in the ward of the King, if after *Procedendo* proces be awarded against the Infant, where the King hath granted the Wardship over before, the same is not good, for it ought to be against the Guardian who may lose, and so the Infant shall have remedy by Mortdancestor, if he lose the land without cause, 46 E:3.20.

Also the Infant (where the King hath granted the Wardship over) shall be vouched in the Wardship of the Grantee, not of the King, 1 E:3.13.

And where he hath parcell of the lands in his own hands which is holden in Socage, the proces shall be against the Guardian, and also against himself, 47 E:3.18.

The Infant shall be vouched in the Wardship of the Grantee of the King, and he shall pray in Aid of the King, 48 E:3.5. 1 E:3.13. but see 46 E:3.20. That Proces shall be made against the Grantee of the King, after *Procedendo* upon a Voucher of the Heir in the Ward of the King: But *Quare* if it be a Counter plea for the Demandant to say, that the King hath granted the Wardship over, where the Heir is vouched in his Wardship, 3 H.6.17. *Voucher* 28.

Note where the Infant is vouched in the Wardship of the King in Dower,

er, the Tenant cannot alledge upon the *Proceedendo*, that he hath a Warranty over, and so shall lose the answer which his Guardian might well have, if he were vouched in the Wardship of a common person, 5 E. 3. 4. But *ex assensu partium*, day was given to the Infant to appear, and to sue to the King.

Three Parceners Vouches, two in the Wardship of the King, one of full age, and the other dead, her husband Tenant by the Curtesie, yet he had rendred in value before for his proportion, 26 E. 3. 5.

XXXII. Where a man shall be vouched in the Ward of divers stranger persons to the Writ, whereof the Queen.

IN Dower, the Tenant did vouch two Sons, (s) the eldest, whose body was in the Wardship of T. Guardian in Fact, and part of the lands in the Wardship of the Demandant for Nurture, and p. in the Wardship of S. Guardian in Knights-service, and the youngest in the Wardship of the Demandant for Nurture, for Land Borough English, 15 E. 3. *Voucher* 22.

The Heir was vouched as of full age for parcell, and for part of his Land in the Wardship of T. and other part in the Wardship of S. 48 E. 3. 5. for an Infant shall be vouched as of full age, for the land not in Ward, for it is no plea to say, that he is within age, if he do not further say, and in Ward, and the proces shall be well made against himself: for where the Infant is vouched in Dower, or in Wardship for a Socage Tenure, the Voucher and Proces shall be alwaies against himself, as of full age, 50 E. 3. 15. 33 E. 3. 31. 25 E. 3. 16.

See 17 E. 3. 59. The Heir vouched in the Wardship of the King, Queen, and others in Dower, and 14 E. 3. *Voucher* 110. The Heir vouched in the Ward of the Queen and others; And if one of the Guardians dieth, the Voucher shall abate, and the Tenant shall revouch in the Wardship of the others, and the Executors of him that is dead, 22 E. 3. 3. Where one was returned dead at the *Sequatur*, and the Proces not served against the others, the Demandant could not have Seisin, but Revoucher was awarded, H. 5 E. 3. *Voucher* 179. The Heir vouched in the wardship of H. Prior, and others, at the *Sequatur*, the Prior was returned dead, the Tenant was suffered to revouch the Heir, &c. which he should not have done, if the Prior had been named by his proper name of Baptisme. And 5 E. 3. 6. One Guardian was returned dead, yet the other shall answer for his part, 48 E. 3. 5. 5 E. 3. the Voucher against Executors of the dead, and others.

The Infant vouched in ward was returned dead at the *Sequatur*, and the guardian did not appear, yet the Demandant could not have seisin; for now he is not guardian of the Infant, but the voucher ended, 22 E. 3. 20. Where



Where the heir hath land holden in Knights service, & also land holden in socage, if the guardian in socage, or the heir himself be not vouched with the Guardian in Knights service, the Voucher shall abate, for no Land in Knights service shall be rendered in value, if he hath sufficient holden in Socage: Also voucher shall abate by omission of any of the Guardians in Knights service, for the equality of the loss, also if they be all named, yet the Voucher is not good by the leaving out of the Guardian in socage in Dower, 25 E.3. 16. 27 E.3. 3.

Voucher of the heir in the wardship of diverse, where one hath nothing in the Wardship, shall not hurt; but upon the matter averred, when he makes default, the other shall answer, although he hath the Wardship of the body, and none of the Land; but the leaving out of one who hath any thing in the land shall abate the whole Voucher, by *Herle*, 8 E.3. 15. 31 E.1. *Voucher*, 284.

See 7 E.3. 3. That he who hath nothing but the body in wardship shall be vouched, and shall plead in bar, be he guardian in right or in fact, but where the Guardian in fact doth appear, and the other not, process shall be continued against him, and the other shall answer alone.

The Guardian pleaded, that the heir had but tail upon a voucher, 8 *Edw.* 3 63.

The heir vouched in the wardship of the Assignee who had but at will, because the possession was in the King, 4 E. 2.

If the Guardian plead that the demandant hath accepted parcell in the same Town, it is a good plea to the Writ, 5 E.3. 196. vi. 18 E. 2. *voucher* 231.

The wife of the Tenant brought Dower against the Feoffee of her husband, he shall not vouch the Lord paramount, who hath the Wardship of the heir for cause of wardship of the mesne, but shall vouch the Mesne in ward, as Guardian, 4 *Edw.* 2 247.

Where there are two Joynt Lords, of necessity both must be vouched, but the husband alone may be vouched where he hath nothing but in the right of his wife, 30 E.1. 299. 30 E.1. *voucher* 284.

XXXIII. *Where the vouchee may enter into the Warranty Gratis, without process, and where he may counterplead the binding although he enter Gratis into the Warranty.*

**O**ne was vouched as within age, and at issue, of what age he was, and he appeared upon process to be inspected, and adjudged of full age, now it is in his election if he will enter into the warranty without process, 15 H. 6. *voucher* 34. and 45 E.3. 23. but see 13 E.3. *voucher* 118. where the vouchee was not suffered to enter into the warranty until he was of age.

The

The husband and wife vouches, the wife entered into the Warranty *gratis*, upon the default of the husband, 38 E.3.11.

Where two are vouched jointly, the one shall not enter into the warranty without the other, until process be ended against him, and then he may enter *Gratis*, per *Idem dies*, otherwise it is of a severall voucher, and where the heir is vouched in the wardship of many, for that is as a severall voucher, 48 E.3.5.

If Lessee for life prayeth in aid of him in the Reversion, who appeareth, but will not joyn with him, for which the Lessee voucheth him, and he enters into the warranty *Gratis*, and was received, 32 Edm.3. voucher 1199.

A voucher counterpleaded, was granted at another day, but the Vouches was not suffered to enter into the Warranty *Gratis*, because it was not at the first day 29 E.3. voucher 121.

The plea was sent into the Common pleas for a forrain voucher in L. and the vouches could not enter *Gratis* into the warranty at the first day in the Common pleas, because that was not the first day, 22 E.3.3.

The Heir of the husband vouched in Dower, received to enter into the Warranty *Gratis*, where the Sheriff had returned that he had nothing &c. and rendered Dower, 20 E.3. voucher 126.

At the *Sequatur*, &c. although that the Writ was not returned, the vouches may well enter into the Warranty *Gratis*, and that by Attorney, 22 E.3.4. and 7. 2 E.3.13. 13 E.3. voucher 74 3 E.3. *Itin Not. voucher* 200 where at the Summons returned, the husband, wife, and son of the wife, vouches, did enter into the warranty by their Attorney *Gratis*, and vouched over.

So he may enter into the Warranty *gratis*, although the Writ be not returned 5 E.3. *Itin Bedford* 197.

In Assise the vouches alwayes enters into warranty *gratis*, for no process shall be against him, 3 E.3. voucher 199. 26 Ass.20. and that shall be alwayes at the first day, not after, 20 E.3. Gar:84. 4 E.3. Counterplea of warranty 8. 18 E.3. voucher 230.

The first process was not executed nor returned, the second was returned *Tarde*, then the Tenant had process at his perill and upon that *Nihil* being returned, the Vouches would not enter into the Warranty *gratis*, but the Demandant recovered presently, and not the Tenant over, 19 E.2. voucher, 234.

See 5 Ed 2. voucher 256. At the first process, the vouches may well enter *gratis* into the Warranty, but upon the other process not executed, and a *Tarde*, or *Nihil* returned, he shall not enter into the Warranty until at the *Sequatur*, 48 E.3.1.



XXXIV. Where one shall not vouch without cause of her voucher and what cause shall be sufficient, and where it is not materiall.

**J**uris utrum against a woman, she said, that she had but for life, the Reversion to the two heirs of her husband in Gavelkind, and vouched them, and good, without cause, where they were sons of the husband, yet she should not have vouched the husband without cause shewed, 18 E. 3. voucher, 2. because the husband is party to the Writ; 13 E. 3. voucher 17. and 119. 31 E. 3. voucher 25. where shee was received upon the default of the husband, 14 E. 3. voucher 109. 5 E. 3. 174.

He who voucheth himself to save the taile, shall shew cause, 18 E. 3. 6. and 52. 40 E. 3. 2.

One parcener after Aid prayer of her sister, vouched her selfe and her sister to save the tail, and shewed cause, 11 E. 3. voucher 41. 14 E. 3. 32. & 41 E. 3. voucher 69. 50 E. 3. 2. and 32 E. 3. voucher 96. and 100. So where he voucheth himself to have a joynt estate, as Assignee, 19 E. 3. voucher 122. 25 E. 3. voucher 144. and 7 E. 3. 61: voucher 153.

One parcener may vouch another after cause shewed, for he may have a warranty from her, as by Release, so such voucher doth import a good cause by Common intendment, 18 E. 3. voucher 6.

Tenant by Receipt, vouched the Lessee for life, and was driven to shew cause, 18 E. 3. 30.

See 31 E. 3. voucher 26. contrary in that case, but there it was said, if the Lessee had vouched him in the Reversion, he shall not revouch him sans cause.

In a *Quod ei desorcent*, the plaintiff may well vouch without cause, and it is no Counterplea to disprove the title of the vouchee in Reversion, as that he hath released after the Recovery, 9 E. 3. 22.

In a Writ of Ward, the Tenant shall not vouch without cause, because but a chattell, 9 E. 3. 61. But hee need not shew the Deed of the grant, &c. 46 E. 3. 25: 25 E. 3. 3. See 12 R. 2. Counterplea of voucher 35. good matter, and it is not materiall if the Deed hath not warranty, 31 E. 3. voucher 24: 12 E. 3. voucher 27: 30 E. 3. 6. a good case, and there the vouchee could not have advantage of it, that the Deed did not comprehend the warranty.

In Dower, an infant shall not be vouched without cause, and that shall be without a Deed of the Ancestor shewed, 31 E. 3. voucher 24. 19 E. 2. voucher 223: 50 E. 3. 25.

One parcener prayed in ayd of another, and upon her Default vouched a stranger, who vouched that parcener who did not appear, & did not shew cause. *Fortes.* Where the Demandant cannot have the ordinary counterplea, it behooveth that he shew cause, as if one Demandant is severed, and

and the Tenant voucheth him, or the vouc hee vouch over, and he vouch the Tenant, 20 H.6.2.

*Precipe* against four, where two vouch, the other two ought to shew cause, by the opinion, 31 H.6. *voucher* 48. 26 E.3. *voucher* 304. and so alwayes when a party to the Writ is vouched, See 12 H.4.20. 43 E.3.7. 18 E.3.51.

And the cause is traversable, 11 H.4.19.8.E 3.61. and 13 E.3.40 E. 3.14. & 23.

But if one Tenant makes default after default, and now taking the entirety upon him, he may vouch without shewing cause, 11 H.4.19.8.E.3.8. so where one disclaimes, and the other takes upon him the entirety, 8 E.3.7. and 21 E.3.33. so where the Writ is against two by severall *Precipes*, 5 E.3.7.

But a woman received for the Default of her husband, and shall not vouch him without cause, 43 E.3.7.

If the eldest brother vouch himself and his youngest brother, &c. or his Co-heir in Gavelkind, he shall shew cause, 40 E.3.22 E.3.10. 12 Ed.3. *voucher* 113. So where he voucheth himself and a stranger, 27 Edw.3. *voucher* 146. 26 E.3.304 29 Ed.3.310.

In a *Precipe* against two, they shall not vouch severally without cause shewed, 42 E.3.12 H.7.2.

A woman received upon Default of her husband, vouched a stranger, he shall not vouch the husband without cause, no more then the Wife her self, no more then he should be, if the husband and wife had been first vouched, 43 E.3.44. 2 E.2. *voucher* 146.

He who voucheth two heirs of one for the possession, the other as heir at the Common Law, he ought to shew cause, 43 E.3.5 E.3. *Voucher*, 183.

Where the vouchee doth revouch the Tenant, or any who hath vouched him before, he ought to shew cause for that 44 E.3.16. 16 E.3. *voucher* 87. 17 E.3.32 E.3.95. 7 E.3.4 E.2.146.

*Precipe* against husband and wife, he disclaimed for his wife, and after vouched him, she was driven to shew cause for the estate made for the coverture, 32 E.3. *voucher* 102.

A woman Receiver shall vouch her self and her husband without cause 3 E.3.4. 201. 5 E.3.181. 15 Aff. 204.

The husband shall not vouch himselfe and his wife without cause. 4 E.3.2.

The Tenant vouched the husband and wife without cause, 25 E.3. *voucher* 141.

In escheat, The Tenant vouched himself his wife, and another woman as heirs of T. and had the voucher without case, 18 E.2. *voucher* 229. 26 E.3.304. and 29 E.3.3. *voucher* 300. who were vouched as heirs.

A *Precipe* against husband, wife, and a third person, the husband and wife disclaimed, the third vouched them without cause shewed, 29 Edw.3.10.



*Præcipe* against *B.* and others, the others vouch *B.* who being present entred into the warranty, and no cause shewed, the writ was by severall *Præcipes*, 18 E:3. *voucher* 180.

The Prayee in Aid cannot vouch himself, and another without cause shewed, 29 E:3. *voucher* 308. 26 E:3. 304. 29 E:3. 310.

XXXV. *What shall be said a good Cause, and what a good Counterplea to the Cause, what not, what to binding.*

**T**He Issue in tail shall not vouch himself for to save the tail for a Reversion descended and holden no cause, because he may have the warranty paramount, &c. 18 E:3.

The one Parcener upon the default of the other prayed in Aid, and was received upon the default of her husband, did vouch her self and the other Sister for to save the Tail given by the common Ancestor unto the husband and her, and was received, 11 E:3. *Voucher* 14.

One vouched himself to save the tail given him in the Remainder, by the render of *B.* to whom *I.* levied a Fine, and good; And it is no Counterplea, that *I.* had nothing, 41 E:3. See there, the Demandant may well say, that *Partes nihil habuerunt*, &c, so that *I.* did not enfeof, &c. 40 E. 3. 22. but shall not say, that the Tenant had Fee in possession, for that is to the binding, *Voucher* 70.

Also the cause alledged, as a Fine, or Feoffment, shall not be Counterpleaded, because it hath not an expresse warranty, &c. 50 E:3. *Voucher* 78. 14 E:3. 109. 31 E:3. *Voucher* 23. 13 E:3. 119.

He to whom the Remainder is given in tail, upon a Render in a Fine, shall vouch himself to save it, although he be not Heir of him who renders the land: but it shall be a good plea, that the particular Tenant had nothing of the Gift or Feoffment of him who is supposed to render the land, for that is to the cause: but he should not have had the Averment that he who rendered had not any thing of the Gift of him who acknowledged the Fine, because the Fine is executed, 41 E:3. *Voucher* 69. 32 E:3. 96. and 14 E:3. 109. and 13 E:3. 17.

But it was granted, 32 E:3. *Voucher* 69. That where the Tenant doth vouch himself, the Demandant is in the place of the Vouchee to counterplead the warranty.

The Husband having a warranty to him and his wife in tail, discontinued for life, and was received upon a default of the Tenant, and vouched himself to save the joynt Estate, and holden a good Counterplea to say, that he is in of another Estate, 19 E:3. 122. 41 E:3. 70.

It is no Counterplea where he in the Remainder voucheth himself, to say, that the warranty is onely to the Tenant for life, 25 E:3. *Voucher* 144. 5. Aff. 11 H. 7. 4.

Lessee for life shall not vouch himself to save the Remainder, nor to save his own estate, 7 E:3. 153.

Tenant by Resceit voucheth the Lessee who enfeoffed him first, it is a good Counterplea that he hath nothing of his Feoffment, 18 E: 3. *Voucher* 9.

A woman received vouched her husband as Assignee of T. to whom the husband levied a Fine, and yet rendred, &c. in Fee 13 E: 3. *Voucher* 17.

The Tenant vouched himself and the younger Brother, &c. alledging the Feoffment of his Father, it is a good Counterplea, that he did re-enfeoff the Father, and the younger Brother, and to the heirs of the Father, and that he himself is heir, so the warranty is extinct, 40 E:3. 14.

But where he hath by Feoffment, &c. VVarranty extinct by discent of the Reversion, is no Counterplea, nor where he is in by Feoffment, 41 E. 3. 61.

VVhere the husband and wife are vouched for cause, as for their Feoffment, it is not sufficient to traverse the Feoffment of the wife, but of them both, 43 E:3. 65.

Entry into the VVarranty generally is no Estoppel to revouch the Tenant for cause, 7 E:3. 152.

The husband voucheth his wife for Feoffment before the Coverture, it is a good Counterplea, that he did not enfeoff before the Coverture, 32 E:3. 202. see 13. *Ass*:9.

In a writ of ward the Defendant vouched by a Deed, the Plaintiff shall not have answer to the Deed, because the Defendant may bind himself by another Deed, 30 E:3. 103.

XXXVI. *Where one may enter into the Warrantie saving his Action, or Rent, or Entry.*

**T**enant in tail discontinueth with warranty and dieth, the Feoffee voucheth the Issue, he was forced to enter into the warranty, and saved his Action of *Formedon* by Protestation, 7 E:3. 45. 11 H.4. vi. 8.E.3. the Guardian pleaded that matter, and could not be admitted to the Plea before his entry into the warranty, 5 E: 3. 15.

So of an Action of Fee-simple, as that the Ancestor dieth seised, and the Tenant abated: So saving his Action of *Mortdancer*, &c. for in none of the said Cases, he shall not save the Land to be put in value, but the Action of the Land demanded against the Tenant, 4 E:3. *Voucher* 176. and 5 E:3. 59. where *Trem.* saith, That he shall make protestation only for to save Fee tail; so saith *Wilby*, 3 E:3. 51. 50 E:3. 12. That he cannot enter into the warranty, saving the Action of Fee, where Fee is demanded.

VVhere an Infant entereth into the warranty, saving his Action of *Dum*  
Fffff 2 *fnit*



*suit infra atatem* of the Alienation of his Ancestor, the protestation was not entred, for his Action shall be saved, without such speciall entry of it, 14 E:3 *Voucher* 226.

The husband having cause of Assise, or writ of entry being vouched with his wife, by the binding of the wife, entreth generally into the Warranty: Now he shall be barred of his Action during the life of his wife, but not after, 13 E 3. *Garr.* 36.

See 50 E:3. 12. Where a man cannot enter into the Warranty, saving the Action of Fee, where Fee is demanded; but he may wel, where Freehold or Tail is demanded: And see 6 E:3. 11. That a general entry into the Warranty, confirming the estate of the Tenant who maketh Defeasance, as for a Condition broken, for which he would not enter, but suffered the Demandant to recover, *Quere*, if he might have entred into the Warranty saving his Action, or re-enter, for nothing is spoken of that there, 6 E:3. 11. see 12 E:2. *Voucher* 264. 31 E:3. *Voucher* 285.

Where Lessee for life voucheth him in the Reversion, he may well enter into Warranty, saving, &c. a hundred shillings of Rent, and if he doth not so, he may lose it upon the rendring in value, 2 E. 1. *Voucher* 208. 12 E:2. *Voucher* 264.

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XXXVII. *Where the Vouchee ought to enter specially in the Warranty, for the losse that may be to him.*

**N**Ote, that where the Vouchee entreth into the warranty generally, and loseth, yet he shall not render in value, but according to the estate which the Tenant looseth, for he need do no more but to bar the demandant, 38 E:3. 16. 7 E:3. 41 E:3. 7. 40. *Ass.* 43 E:3. 7. 44 E:3. 39. 16 E:3. *Voucher* 87. *asc.*

But if a stranger release to my Tenant for life in Fee, with warranty, and he vouch him, and he entreth simply into the warranty, he shall render a Fee in value; otherwise it is of a speciall entry, &c. 16 E:3 *Voucher* 87. by *Green*. But see 38 E:3. 21. that he shall not render but for life, if the Tenant do not bind himself specially in Fee, and hath the same entred specially.

If the Vouchee demand what he hath to bind him to warranty: And the Tenant bind himself as of Fee, whereas he hath an estate but for life: Now upon a generall entry into the warranty, the Vouchee shall render fee in value, by *Merle*, 8 E:3. 70.

But see 17 E:3. 62. That notwithstanding such generall entry upon such binding alledged, yet if the Tenant alledge it upon a specialty, which in truth doth comprehend a warranty, but according to the estate, the Vouchee shall not warrant more, by *Wilby*.

In a *Precipe* of twenty acres, the Tenant saith, that the whole land in demand

demand is but ten acres, and of that vouch, as of the whole demanded, (*Ut oportet*) the Vouchee shall be summoned to warrant the land demanded, and if he warrant all, it is good, and if he extort warranty of parcell, the Demandant shall have Seisin of that part, with an entry of his challenge upon the Voucher, 19 E.3. *voucher* 129. But see, 17 E: 3. 62. That upon such Voucher, where the Vouchee enters generally, he shall not render in value, but according to that which he is bound to warranty, and not according to the demand, if not upon demand, that he is in of the whole &c. the Tenant alledge a binding in the whole, without shewing a Deed, that he hath warranted but parcell of it.

See 5 E:3.7. where generall Voucher in a *Pracipe* of twenty acres, the Vouchee after a generall entry into the warranty, may say, that the whole demand is but ten acres, and of that plead in Bar: And he need not pray in Aid to be discharged of the residue, but the Demandant ought to pray Seisin of the residue, by *Stone*, 17 E: 3. 62. *Wilby* agrees there, that the Vouchee shall not render more in value by his generall entry into the warranty, then the Tenant lost, by *Schard*, 17 E. 3. 63.

*Rich.* then saith, If the Tenant upon the Demand, &c alledge a binding which is but to parcell, and the Demandant challenge, or except against it, yet if he plead over, and doth not demur untill it be adjudged, that he ought to be quit of that parcell, he shall render in value according to the demand, *vi.* If the Protestation shall help him, when there is not a Deed proving that he was bound but to warrant parcell.

VWhere in a *Pracipe* of Land in five Towns, the Tenant vouched and shewed that he was bound but in four Towns, &c. A generall entry, &c. shall not bind the Vouchee but for the Lands in the four Towns: But *Newton* saith, That this shall be a good Counterplea to the binding, 22 H. 6. 13. But this is but for the Land in the fifth Town, by *Herle*, 7 E. 3. 6.

But if the Tenant in that case vouch generally, and sheweth a Deed upon the Voucher (as where he voucheth an Infant in Dower) and the Deed speaks only of four Towns, the Demandant may have Seisin of the land in the fifth Town, by *Herle*, 7 E. 3. 6.

And see 10 E:3.12. Where in a Writ of eight pounds, the Tenant saith, that the whole demand is but of three pounds ten shillings, and voucheth: now the Vouchee shall render in value but three pounds ten shillings, although he enter generally into the Warranty, and although the Demandant declare against him of eight pounds: but the Demandant shall recover the whole demand against the Tenant, if in truth it be so much, and if in truth it be not, yet he shall recover the three pounds ten shillings, for that is acknowledged by the Tenant.

And if the Tenant vouch of the whole, and the Vouchee is to traverse part with him, and will not enter as to that part, the Demandant shall recover that part presently, 10 E:3.12.

Upon generall entry into the Warranty, land which he hath not but for life, or in tail, and that, by discent, shall be put in value, 7 E:2. *Dower* 148. Also



Also he who entreth generally into the Warranty, shall render according to the value of the land, as it now is, not as it was at the Feoffment made, 19 H:6.46. and 61. And therefore the value as it was at the time of the Feoffment was entred by way of protestation, 2 E:3. *Voucher* 190. and 91 E:3. *Voucher* 288.

And therefore where the Grantor of a Wardship of the value of twenty pounds *per annum*, which by a later discent of the land, is now of the value of a hundred pounds *per annum*, entred into the warranty, without the protestation, he was driven to render the hundred pounds in value: but otherwise it is where the value is increased after the Judgment, for there he need not take protestation, that at the time of the entry, &c. so no default is in him, 30 E:3 3 E:3. *Recovery in value* 18.

Dower of the third part of a Mannor, the Heire of the husband vouch- ed, rendred the Demand, and for so much shall be vouched according to the demand, although the warranty was but of one house, because he entred generally, and took no protestation that the Deed did not extend to the whole, &c. 16 E:3. *Voucher* 61.

Note, the Vouchee upon the entry into the warranty may well make protestation, saving his entry for a Condition broken, &c. or saving the Mortgage, &c. otherwise he shall render Fee undefeasible, &c. 12 E:2. *Voucher* 265. 31 E:3. *Voucher* 285. So he may do saving his Rent-charge, 12 E:2. *Voucher* 264.

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XXXVIII. Where a man shall vouch, or rebutt by Warranty which commenceth by Disseisin.

**F**ather and Son Joynt-tenants, the Father maketh a Feoffment of the whole with warranty, and dieth, it commenceth by Disseisin for a Moyety, and is good for the other Moyety, 22 H:6.51. 13 E:3. *Garr.* 24, 25. 19 E:3. *Garr.* 38.

The Grandfather Lessee for years, makes a Feoffment with warranty, this is by Disseisin: but if he had a Freeholder for life, the Feoffee should vouch, 43 E:3. *Gar.* 13. vi. 16 E:3. *Gar.* 20, 21. vi. 31 E:3. *Gar.* 28. 22 H:6.51. The Father Joynt-tenant alieneth, the Son is put to his Action for the Moyety, the estate was to the Father and Son, and to the Heirs of the body of the Father.

If my Father who disseiseth me, or is my Lessee at will, maketh a Feoffment with warranty, it is by Disseisin, 46 E:3. 21. 31 E:3. *Garr.* 28. Otherwise it is where the Father disseiseth a stranger, or being the Lessee at will of a stranger, maketh a Feoffment, &c. that shall bind the Heir, 50 E:3. *Counterplea of warranty* 2. But if my Father giveth land in tail, and my Uncle doth disseise the Donee, and makes a Feoffment with warranty, and

and the Donee dieth without issue: Now in a Formedon in the Reverter, I shall not be barred by this warranty, yet the Disseisin was done to a stranger, &c. 31 E:3. Gar.28.

XXXIX. Where one shall be bound to VVarranty, without cause of VVarranty, and where a man shall be bound by a VVarranty, to which he is a stranger.

HE who gives Lands in Frankalmoign, and his Heirs shall be bound for ever to warranty, during the estate, 7 E:2. Gar.79. see 4 E:3. 19. and 3 E:2.

The same Law of a Tenure by Homage Ancestrell, after the Homage recited, and during the continuance of the estate in the blood, &c. r. E.1. Gar.90. But it is there said, that the Lord and his Heirs who alien, the Lord shall yet be bound to warranty, *Quod quare.*

The same Law of Exchanges, but here the Heir shall not be bound to warranty, if he hath not the land in Exchange in possession, 22 E:3.3.

The same Law of the word, *Dedi*, in the Deed of Feoffment, where a Seignior is reserved, the Heir shall be also bound to warranty, and that against the Assignee of the Tenant for the possibility of the Escheat, &c. 31 E:3. Gar.92. *Voucher* 258. there was the word *Acquiescere, & defendere*; but the same are no words of warranty, 6 E:2. *Voucher* 258.

If a man grant to me, that he will render to me in value if I lose, &c. the same is but a Covenant, and I shall not vouch by it, 39 E:3. *Aid of the King* 52.

He who granteth a ward by *Dedi*, shall be vouched, but not his Heirs, nor Executors in a writ of ward, 3 E:2. *Voucher* 222. 12 E:2. *Voucher* 27. 8 E:3. *voucher* 60.

The husband shall not vouch in a writ of ward, where the wardship was granted to the wife then sole, by the word *Dedi*, because he is Assignee who shall not vouch by that word, *quare* of the husband, 29 E:3. *voucher* 312.

But see 30 E:3.6. *Recovery in value* 1. where the Heir of the husband or any Assignee in Fact, or in Law, shall vouch by *Dedi*, but the Heir in execution shall not be vouched, but where a Rent is reserved, &c. 28 Aff: 39.25 Aff:8.2 H:7.8.

If a Feoffment be made rendring Rent and Service, and the Feoffee alieneth to hold of the Lord, and rendring Rent to him, this Feoffee may well vouch the first Feoffor as Assignee by word, without clause of warranty, 13 E:3. *voucher* 119.

If two make a Feoffment by *Dedi*, and one dieth, his Heir shall not be vouched, but the Survivor only, for *Dedi* shall not bind the Heir without Rent, or Service reserved, or expresse clause of warranty, 29 E:3.26.

XL. Where:



XL. *Where a man shall be vouched and bound to Warranty by reason of a Reversion.*

**T**enant in Frank-marriage shall vouch or rebut the Donor or his heirs for the Reversion descended, without clause of warranty, 31 E. 3. *Gar.* 29.

The Heir was vouched by the Lessee for life of his Ancestor, and it was holden that he should be bounden to warranty, if he do not disclaim in the Reversion, although the Lease was without Deed, and no Rent reserved, 14 E. 3. *warranty* 32.

As to the Deed, see 6 E. 3. 11. where the Heir was driven to enter into the warranty, if he would not disclaim, but there a Rent was reserved.

Of the Disclaimer of him who is vouched for a Reversion, see 40 E. 3. 27. That it shall not be suffered where a Rent is reserved: And see 20 H. 6. 25. where the Lessor himself shall not disclaim, where he is vouched for the Reversion, but his Heir, or Grantee, &c. although it be by Fine, &c. may well disclaim: yet it is holden, 17 E. 3. 39. that the Lessor himself may well disclaim, if not in Dower, &c. 7 E. 3. 5 E. 2. *voucher* 249.

Tenant for life with warranty, yet he shall vouch the Grantee of the Lessor for the Reversion, 20 E. 3. *Counterplea of warranty* 7.

The Heir was vouched for the Reversion of a penny of the Rent, and for the Rent by a Deed, 7 E. 3. 6. vi. 5 E. 3. *voucher* 184. see 6 H. 7. 2. where the Lessor himself shall not be bound for a bare Reversion, without the word *Dedi*, or a Rent reserved: See contrary, 10 H. 7. 10. and admitted, 7 E. 3. 43.

Tenant by the Curtesie may vouch him in the Reversion, but shall recover nothing in value, 14 H. 6. 25. see there, Tenant for life shall not vouch him in the Remainder.

Of the Voucher of Tenant by the Curtesie, see 14 H. 3. *voucher* 275.

In Dower the Tenant vouched the Heir of the husband, for the Reversion, and good, 8 E. 3. 7.

Tenant for life vouched him in the Reversion, without saying of whose Lease, &c. 10 E. 3.

The Heir was vouched for a Reversion where a Rent was reserved without Deed, 6 E. 3. 11.

The Lessor was vouched for a bare Reversion, 6 E. 3. 46.

The Reversion with Services shall bind the Heir to warranty without a Deed, 11 E. 2. *voucher* 261.

Tenant in Dower shall alwaies vouch for cause of the Reversion, 29 E. 3. *voucher* 309. see 15 H. 3. *voucher* 276.

A Vicar Lessor was vouched, and prayed in aid, 9 E. 3. 8. and 30.

XLl. *VV*here a man fails of binding against his Vouchee, and where of part of it.

**VV**Here the husband and wife are vouched, and bounden by their Deed before Coverture, the husband shall only warrant the land, and the wife shall be discharged; so he hath not failed of the whole, 44 E:3.20 E:3. *voucher* 130

He who voucheth two as Heirs, and when they appear, he confesseth that one of them is not Heir, or he voucheth one as Heir, and saith, that he hath a Co-heir not named: Or if upon the Voucher of two he confesseth that he hath released to one of them: in these cases he hath failed of his whole warranty: But where the one Vouchee is not summoned, he shall lose as to a Moyety, and shall have warranty against the other who doth not appear for the other Moyety, 45 E:3.23.

See where upon the default of the one he shall have the whole warranty against the other by averment, that he who appeareth not hath nothing, 47 E:3.

But where he hath colour to vouch both, although that one extort the Warranty, he shall have the whole against the other: As where he voucheth the Survivor of the Feoffors, and the Heir of the other by *De-* 48 E:3.26. Otherwise it is, where he hath no colour against the one.

And if the Lord vouch, and hath binding but for parcell of the land in demand, he hath failed but of parcell, and of that the Demandant ought to pray Seisin, 10 E:3. and 17 E:3.63.

So where the binding is not in so many Towns, as in the demand, 7 E:3.6. 19 E:3. *Voucher* 123. 22 H:6.6.

*Pracipe* of a house and six acres, &c. the Tenant vouched, and the Deed of binding to warranty was but of a house *cum pertinentiis*, yet it was good for the whole, 4 E:2. *voucher* 244. 12 E:2. *voucher* 264.

Two Joynt-tenants, the one of full age, the other within age make a Feoffment with warranty; the Tenant voucheth them, he faileth as to the Infant, but he shall have the whole warranty against the other, 1. E. 1. *voucher* 267. 39 E:3.26. by *Merton* and *Chandish*.

The same Law where two are vouched for a Reversion, and the one disclaims, see there, 39 H:6.26.

But if he shew severall bindings upon a Joynt-voucher of two, he hath failed of the whole, by *Merton* and *Chandish* there: Also when he voucheth one, where he should vouch two: And 45 E:3.23. where one voucheth, and two ought to vouch, &c. for Voucher is as an Action.

In Dower, the Vouchee voucheth *S.* and the Deed was [to him and his wife, and therefore failed for the whole, 10 E:3.52. wherewith agrees, 38 E:3.5. yet if the wife were received in the case, he should have the Voucher, 10 E:3.



The same Law where the Joynt-tenant who hath fee is received, *ib.* and Voucher, 4 E:2. 243.

Entry supposing by *A.* the Tenant may well say, that *A.* and *I.* leased &c. and vouch 36 H.6. Entry 48. 32 H:6. 21.

So where the Writ doth suppose that he entred by *I.* and *A.* he may well plead that he entred by one of them, 44 E: 3. 31. see 22 H. 6. Voucher 37.

## XLII. Where the Vouchee shall revouch the Tenant, or one of the Tenants.

**T**He Vouchee, if he do revouch the Tenant, he ought to shew cause, 16 E. 3. voucher 87.

But where husband and wife vouch, the Vouchee may well revouch the husband without shewing cause, 17 E: 3. voucher 92. 7 E: 3. voucher 152. 10 E: 3. 174.

So alwaies where the Vouchee doth imply a cause, there a speciall cause need not to be alledged: As if two vouch one, he may revouch one of them without shewing cause, &c. 11 H. 4. 22. 20 H. 6. 2.



## Warranty of Charters.

### I. The Declaration in a Writ of Warranty of Charters.

**W**arranty of Charters against *I. quia de eo tenet, & unde chartam habet*, the Writ good, and the Declaration was of the Feoffment of *7.* by a Deed shewed, and the Plaintiff acquitted of Disseisin: and that this writ was brought hanging the Assise, and the Declaration good that he held of him, notwithstanding that the Feoffment was after the Statute, for this is the ancient form. And *Wilby* saith, That he hath seen a Warranty demanded by Homage Ancestrell upon such a Writ, 24 E: 3. 25. Warranty of Charters 1.

The Declaration shall be good, that this Writ was brought pendant the Assise against him, without saying, that he hath lost any thing, for it

it is but to dereign the warranty, but to declare upon a gift where the warranty is by release, seems not to be good, and if the deed of gift be in his possession, so as it enureth as a Release, he ought to declare upon a Release, 3 E. 3. 8. *Gar. de Charters* 3. and he may well declare upon a Release where the deed is, *Unde chartam habet*; *M.* 44 E. 3. *warranty of Charters* 18. and he may declare to his damages, without alledging any losse in fact &c. 3 E. 3. 21: *Gar. of Charters* 4.

The Plaintiff declared upon a Release of the Grand ather by Fine, and that one T. sued a *Scire facias* against the plaintiff, who prayed the Defendant to warrant the Land &c; and did not declare that this Writ was brought hanging the *Scire facias*, for that is left to the Defendant to challenge, 46 *Ass. warranty of Charters* 5: nor he need not say, that the other Writ is yet depending, 41 E. 3. *warranty of Charters* 19.

Where the deed of Feoffment or Fine doth comprehend divers things, &c: in this writ he need not alledge of how much he is impleaded, for if he be impleaded but of parcell, the Defendant shall warrant the whole, and shall render in value according to the losse, by *Hill*, and it is no plea, that he is not impleaded, and in a Declaration, that A: sued a *Scire facias* against him, upon an ancient Fine, he needeth not to say, betwixt what parties the Fine was levied, 29 E. 3. 3: *Brief* 900.

He who had recovered his Warranty in a writ of Warranty of Charters, brought a *Scire facias* of it, and declared that he lost 100 s. of Rent out of the same Land, whereof &c. and alledged all the matter certain in the Writ, and prayed Execution to the value, and the opinion was, that if that Rent were an elder charge before the Feoffment, he should not recover warranty of that by a generall Writ of the Land, but he ought to have brought his Writ of *warrantia Charta*, depending the suit of the Rent, and some said, that he ought to declare, that the Defendant did enfeof him of the Land discharged of the Rent, otherwise it should not bind him, for the Law gave him an answer to discharge himself of the warranty of the Rent, &c. 30 E. 3. 30. *Warranty of Charters*, 22 see *F. N. B.* 135.

II. Where warranty of charters shall be brought, hanging the action against him, and where against him against whom the action is depending, and for him against whom this Writ is brought, where for the Vouchee.

AN Assise was brought against Feoffor and Feoffee, and hanging the same, the Feoffee brought a Writ of Warranty of Charters against the Feoffor, and well, 24 E. 3. 35. *War. of Charters* 1,

It seems to bee a good answer for the time, that there is no action depending against the Plaintiff, 46 *Ass. warranty of Charters* 5. But upon such



## Warranty of Charters.

such plea, the plaintiff shall recover the warranty, *pro loco & tempore*, 29 E.2.3.

The vouchee shall not have this Writ, but depending the first action by *Ing. 30 E.3.30. Warranty of Charters 22.* But *Shard & Hill* for clear Law, 17 E.3.44. he shall not have warranty of Charters at all. See 18 E.3.19.

It is a good Plea, that the Plaintiff was not Tenant the day of the Writ brought, but the Writ shall be well maintained by this, that he was Tenant by warranty the day of the Writ brought, although he had not the Land, 3 E.3.21. *warranty of Charters 4.*

Where a man is vouched, where he cannot vouch over, he shall have a writ of warranty of Charters, 7 H.4.18. *F.N.B. 135.* a Pernor of the profits shall not have this Writ, *Fitzh. N.B. 135.D.*

111. *Where a man shall have this Writ, before he hath lose, pro loco & tempore, and when he hath cause to have this Writ, when not.*

**T**He Plaintiff alwayes in this Writ, shall recover the warranty *pro loco & tempore*, if he hath cause to have it, an action being depending against him, and nothing yet lost, 1 E.3.11. *Warranty of Charters 2 F.N.B. 134.K. 5. E.3.47.*

The Plaintiff shall recover, *pro loco & tempore*, in this action begun after Non-suit of the Plaintiff in the first Writ, 9 E.2. *warranty of Charters 30.34 E.3.20. Disceit 28.acc.* See *F.N.B. 135.* of the Non-suit and old *N.B. 159.* that it behoves, that the action be brought, hanging the first Writ, and then Non-suit depending this shall not hurt.

This Writ bore Date in *October*, and alledged to be impleaded in an assise the week after the assumption of our Lady, so the day of assise was past, yet with averment, that he prayed him to warrant the land, and that the assise is yet depending, the writ was awarded good, 16 E.3. *warranty of Charters 31.*

It is no Plea in this Writ, that he is not impleaded, 29 E.3.3. *Brief 900. 30 E.3.30. 18 E.3.14. warranty of Charters 8.acc.* and that he shall not recover damages, when he is not impleaded; and therewith agrees 4.E.2. *Warranty of Charters 28.* although that the warranty be counterpleaded, but if he deny the Deed, he shall answer damages, although the other hath not lost the Land, 42 E.3. 7.5 E.3.47. *F.N.B. 135.H.* that he shall have damages for the land lost.

A Rent with a Reversion reserved without deed, is a good cause to have this Writ, so the word *Dedi* without expresse warranty, but this not against the heir, *F.N.B. 134.B.H. Quere.* if he who hath recovered warranty, being impleaded afterwards, ought to give notice for a Plea.

I.V. *Where*

IV. Where he who hath recovered *pro loco & tempore*, is put to a new Writ of Warranty of Charters.

HE who hath recovered the warranty, as a generall Writ of warranty of Charters against the Feoffor being impleaded by a stranger in a *Scire facias*, for rent issuing out of the same land, shall have a new writ of warranty of Charters by *Ing. Burton and Thorp Justices*, because that the Feoffor might have good matter of Bar, as to the Rent which he had, not to the land, and he shall not be charged without answer *30 E. 3. 30. Gards 22.*

If land be demanded, and rent out of the same land, the Tenant shall have two Writs of warranty of Charters, (s) of each a Writ, *31 E. 3. warranty of Charters 7.*

V. Where and when the Lands shall be bound to the value by this Writ, and where there shall be recovery, and what thing recovered in this Writ.

STONE Justice saith, that if a man hath acknowledged warranty by this Writ, that his lands are bounden in whose hands soever they come afterwards, but *multi dicebant contrarium*, and that they are not bounden but for the time that the Writ is depending for the land, and although he loseth the land by a false Plea, yet he shall have in value, and that by *Scire facias*, *T. 1. E. 3. 11. warranty of Charters 2.* But if he against whom he recovereth the warranty, did offer a good plea unto him, and he will not plead it, but another plea, and loseth the land, he shall recover nothing in value by *Ing. 30 E. 3. 30. Gards 22.* So no mischief to him that warrants.

But if the Defendant doth confesse the warranty, and the other loseth, he shall recover in value presently, without *Scire facias*, if the Defendant also confesse the losse, otherwise not, and he cannot have in value, but of the lands, which the defendant had the day of the warranty deigned, *P. 16 E. 3. Warranty of Charters 20 9 E. 2. 3. warranty of Charters 30. acc. to the warranty and losse confessed, 4 E. 2. Warranty of Charters 29.* and he shall recover to the value lost, and damages.

Warranty of Charters against A. upon a Charter of his Grandfather the defendant saith, that he had nothing the day of the Writ brought, upon which at issue, and the Plaintiff did recover the warranty *pro loco & tempore* presently, *46 Ass. Warranty of Charters, 5. 9 E. 2. Warranty of Charters 30.* that the lands which he hath the day of the Writ brought, are bounden, and therewith agrees *1 E. 3. 11. temp. E. 11. warranty of Charters 24.*

Fulthorp



## Warranty of Charters.

*Fulthorp* saith, that if I recover in warranty of Charters against my Feoffor Disseisor, I shall have execution, although the Disseisor entereth afterwards; *Paston* negat, because the same hath relation to defeat the warranty &c. 22 H. 6. 22. *Fitzh.* saith, that such entry shall not abate the Writ of warranty of Charters brought before: *F. N. B.* 135 G.

### V 1. VVhat shall be a good Issue, and Bar in this VVrit.

**W**arranty of Charters brought of the gift of the father of the defendant, who saith, he hath nothing of the gift of his father, but the Plaintiff disseised his father, and a good issue; for if he getteth the deed, and afterwards disseised his father, he shall not be helped by it &c. 3 E. 3. 8. *Warranty of Charters* 3.

Warranty of Charters upon a Deed of Feoffment, that nothing passed, is a good Plea, 47 E. 3. 35.

Where he declares upon a Release, it is a good Plea, that he had nothing at the time, 44 E. 3. *Warranty of Charters* 18.

It is a good plea, that the Plaintiff had not any thing in the Land the day of the Writ brought, 3 E. 3. 21.

Warranty of Charters upon an assise brought by *A.* the Defendant saith, that before &c. *A.* was seised untill by *T.* disseised, who enfeofed the defendant, who enfeofed the plaintiff with warranty, upon whom *A.* entred, and the plaintiff re-entred, a good plea, for the warranty is extinct, but if the disseisee had released to the disseisor, he should not avoid it, 21 H. 6. 21. 21 *Warranty of Charters* 16. But afterwards the defendant changed his Plea, and said, that *A.* seised did enfeof three and disseised the three, and enfeofed the Defendant, who enfeofed the Plaintiff, upon whom *F.* entred, and the three did release unto *F.* but he was driven to plead the Release before the assise was arraigned; So in the first Case, he shall shew if the Entrie were before the first request made to warrant, or before Judgment, or pending the Assise; for *Newton* saith, that if the vouchee enter into warranty, and afterwards he pleaded the Entrie before the Assise, before which was no request, and the request after the Entrie of the disseisee was holden void; So voucher after entrie, and the warranty holden extinct, if the disseisee enter before request, although after the Assise brought, for if depending the Writ the tenant maketh a Feoffment, and taketh back an estate, the warranty is extinct, for which cause the Plaintiff said, that such a day pendant &c. he requested &c. before which there was no Entrie, and the Defendant was driven to maintain the Entrie before. *Paston*, if the Defendant was a disseisor at the time of the Feoffment, it is a doubt if he shall disable himself &c. 21 H. 6. *M. 22 H. 6. 22. Gan. of Charters* 17.

Warranty of Charters against the Heir who saith, that he hath a For-  
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medon depending of the sameland, and not allowed, 2 E. 3. *Gar. of Charters* 6. vide 2. E. 3. *Gar. of Charters* 13. ac. and that the issue in Tail shall not be helped by a Formedon depending of the Land, temp. E. 1. *Gar. de Charters* 32. acc. that the issue in Tail shall be charged with assets descended.

If the Plaintiff declare upon a deed of the Defendant, he may well traverse it, and the action shall not be maintained by it, that he hath a deed of his ancestor, 12 H. 3. *Gar. of Charters* 27.

The Defendant saith, that he did not warrant, but against himself and his heirs, the Plaintiff shewed cause for what he is bounden to warranty, and also if he be impleaded by another by his Collusion, this is good.

Of a Bar for the heir see, 46 E. 3. *Division* 6.

VII. *In what writs the party shall be impleaded, when he shall have warranty of Charters, and where it shall be maintained, where he may vouch,*

**P**roperty, the writ lieth for him who is impleaded in such an action in which he cannot vouch, as in Affise, 24 E. 3. 35. *warranty of Charters* 1.

So in a *Scire facias*, 46 *Aff. Gar. of Charters* 5.

So in a *Quare impedit*, 9 H. 6. 56. *warranty of Charters* 15: 44 E. 3. 35.

Warranty of Charters, by him who was impleaded in a Formedon, and not challenged, 41 E. 3. *warranty of Charters* 19.

But it seems the warranty was upon Release, so as he could not vouch, and so it appeareth in the same case in Deceit, 43 E. 3: 20.

For him who is impleaded in a Writ of Entry in the nature of an Affise, 9 E. 2. *warranty of Charters* 30. yet it is said there, that he might have vouched, and then it might be that the Defendant might have barred the demandant, and the plaintiff would have maintained his Writ for the mischief, that the Defendant might have aliened before the voucher &c. but he could not, for which he said, that the Demandant in the Writ of Entry was Non-suit, so as he is but to recover the warranty, for which the other answered &c. 9 E. 2.

So note, he that is not well impleaded shall have this action, if he be not impleaded in an action in which he may vouch, F: N: B: 134. 135.

Yet in this writ it is holden for no plea, that you are impleaded in a Formedon where you may vouch, because it is to recover but the warranty, but in a *Scire facias* to have in value upon losse, in such a writ it shall be a good Plea, 18 E. 3: 32: *Gar. of Charters* 8.

Warranty of Charters by him who is impleaded by writ of Right close in ancient demesne, both parties being of the same Soke, so as he might be helped by voucher there, yet the writ was holden good, because the warranty upon the specialty is altogether at the Common Law &c. temp.



## Warranty of Charters.

*temp. E. 1: warranty of Charters 23. See F: N: B: 13 & 14. the form of it.*

I shall have this Writ against my Feoffor who confesseth himself my Villain, but shall not vouch him, 48 E. 3. 17. *Counterplea of voucher* 31. 15 E. 3: *Counterplea of voucher* 43.

*V 111. Where the heir or his Lands shall be bound by a warranty of his Father, by this writ.*

**T**He heir shall not be driven in this Writ, upon the warranty of the ancestor, to answer if he have by descent, but it is sufficient to say, that he had nothing the day of the Writ brought, 46 *Ass. warranty of Charters* 5.

See *Division 7*: before, the heir charged, and he shall not be discharged by an action depending of the same Land, although he be issue in Tail.

Where the Writ saith, *Unde chartam suam habet &c*: now when he appeareth he shall not be charged by a deed of his ancestor 12 H: 3: *Gaz. of Charters* 27.

If Tenant in Tail alieneth with warranty, and leaveth assents, his issue shall be charged in this Writ, *temp. E: 1: warranty of Charters* 32.

*I X. Where a man shall not have warranty of Charters against himself to save the Tail.*

**R**evieth a fine to B: *come ceo &c*: and B: renders him the Land, to hold of him, and his heirs of his body, and that after his death the Land shall revert to B: and his heirs afore said &c: now B: shall not have warranty of Charters against himself to save the Tail, it seems no entail, 42 E: 3: 5: *Scire facias* 81.

*X. Where request gives Title to have this Action, and where it lieth after the Land recovered against him.*

**S**ee it well argued of the request, 21 H: 6: and 22 H: 6: *Division 7: B*: and see there how Justice shall be upon request.

Warranty of Charters by two, depending the assise, and after the assise ended the writ was abated by the death of one of the plaintiffs, the other shall well have a new writ: which he shall not, if it had been abated by his default, the assise being determined, 43 E: 3. 22: *Brief* 608: See 48 E: 3: 22: an action after Non-suit.

And

And that this Writ is good of a later date, then the day of the Assise, depending, *Vi: 16 E: 2: warranty of Charters 31, see Division 3.*

*XI. Warranty of Charters for one parccner for Recovery, Pro rata.*

**A** Taint upon assise against two parccners, one was received by default prayed in ayd, *Pro rata* after partition made after recovery in Assise, for the said, it may be the greatest part of the land demanded is allotted to us, and perhaps we shall not have warranty of Charters after the recovery &c: yet she was ousted of the ayd, *32 E: 3: Aide 37:*

*XII. Where warranty of Charters shall be sued for Rent demanded out of land, and where a severall writ of warranty of Charters of one and the same thing.*

**I**F depending warranty of Charters, because impleaded of the same land *la Scire facias* is brought against the Tenant for rent out of the same land, he shall have warranty of Charters, by *Thorpe* Justice, so if he hath severall bindings, one of land, another of rent out of Land, he shall have severall Writs of warranty of Charters, being but impleaded of the land only by him: Yet *Finchden* conceives that the binding of the land shall go to all, and so seems to be the opinion of *Seton* Justice. But see there, that he who enfeoffs me with warranty shall not be bound by this Writ to render in value for a Rent-charge which was of an elder time, &c: *30 E: 3: 30: Warranty of Charters 22:*

But see, it is there sayd, If Tenant in tail of a Rent release to the Tenant of the Land, and he enfeoffeth me of the Land with warranty, and afterwards the issue claimeth the Rent, &c. that I. shall have this writ against the feoffor as of land, because the same was discharged of the Rent at time of the feoffment.

This writ shall be brought according to the action against him, as if it be by two parccners, he shall have two writs of warranty of Charters: the same Law, if land and rent be demanded &c. by *Thorpe*, *31 E. 3. warranty of Charters 7.*

Warranty of Charters of land, where Rent was demanded, awarded good, but it was a Rent service, *A 4. E. 3. warranty of Charters 12:*

Upon a fine of lands in two Counties, I shall have one writ of Warranty of Charters in one County of the whole, *29 E. 3. breif 900. See F. N. 135. F.*

If I enfeoff two of two acres severally, and the one enfeoffeth the other of his Acre, he shall have warranty of Charters against me for both acres, *40 E. 3. 41.*

H h h h h

XIII Of



## Warranty of Charters.

temp. E. 1: warranty of Charters 23. See F: N: B: 13 & 14: the form of it.

I shall have this Writ against my Feoffor who confesseth himself my Villain, but shall not vouch him, 48 E. 3. 17. *Counterplea of voucher* 31. 15 E. 3: *Counterplea of voucher* 43.

V 111. Where the heir or his Lands shall be bound by a warranty of his Father, by this writ.

**T**He heir shall not be driven in this Writ, upon the warranty of the ancestor, to answer if he have by descent, but it is sufficient to say, that he had nothing the day of the Writ brought, 46 *Ass. warranty of Charters* 5.

See *Division* 7: before, the heir charged, and he shall not be discharged by an action depending of the same Land, although he be issue in Tail.

Where the Writ saith, *Unde chartam suam habet &c*: now when he appeareth he shall not be charged by a deed of his ancestor 12 H: 3: *Gar. of Charters* 27.

If Tenant in Tail alieneth with warranty, and leaveth assers, his issue shall be charged in this Writ, temp. E: 1: *warranty of Charters* 32.

1 X. Where a man shall not have warranty of Charters against himself to save the Tail.

**R**evieth a fine to B: *come ceo &c*: and B: renders him the Land, to hold of him, and his heirs of his body, and that after his death the Land shall revert to B: and his heirs aforesaid &c: now B: shall not have warranty of Charters against himself to save the Tail, it seems no entail, 42 E: 3: 5: *Scire facias* 81.

X. Where request gives Title to have this Action, and where it lieth after the Land recovered against him.

**S**ee it well argued of the request, 21 H: 6: and 22 H: 6: *Division* 7: B: and see there how Justice shall be upon request.

Warranty of Charters by two, depending the assise, and after the assise ended the writ was abated by the death of one of the plaintiffs, the other shall well have a new writ: which he shall not, if it had been abated by his default, the assise being determined, 43 E: 3. 22: *Brief* 608: See 48 E: 3: 22: an action after Non-suit.

And

## Warranty of Charters.

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And that this Writ is good of a later date, then the day of the Assise, depending, *Vi: 16 E: 2: warranty of Charters 31, see Division 3.*

### XI. Warranty of Charters for one parcener for Recovery, Pro rata.

**A** Taint upon assise against two parceners, one was received by default prayed in ayd, *Pro rata* after partition made after recovery in Assise, for she said, it may be the greatest part of the land demanded is allotted to us, and perhaps we shall not have warranty of Charters after the recovery &c: yet she was ousted of the ayd, 32 E: 3: *Aide 37:*

### XII. Where warranty of Charters shall be sued for Rent demanded out of Land, and where a severall writ of warranty of Charters of one and the same thing.

**I**F depending warranty of Charters, because impleaded of the same land a *Scire facias* is brought against the Tenant for rent out of the same land, he shall have warranty of Charters, by *Thorpe* Justice, so if he hath everall bindings, one of land, another of rent out of Land, he shall have everall Writs of warranty of Charters, being but impleaded of the land only by him: Yet *Finchden* conceives that the binding of the land shall go to all, and so seems to be the opinion of *Seton* Justice. But see there, that he who enfeoffs me with warranty shall not be bound by this Writ to render in value for a Rent-charge which was of an elder time, &c: 30 E: 3: *Warranty of Charters 22:*

But see, it is there sayd, If Tenant in tail of a Rent release to the Tenant of the Land, and he enfeoffeth me of the Land with warranty, and afterwards the issue claimeth the Rent, &c. that I shall have this writ against the feoffor as of land, because the same was discharged of the Rent at time of the feoffment.

This writ shall be brought according to the action against him, as if it be by two parceners, he shall have two writs of warranty of Charters: the same Law, if land and rent be demanded &c. by *Thorpe*, 31 E: 3. *warranty of Charters 7.*

Warranty of Charters of land, where Rent was demanded, awarded good, but it was a Rent service, *A 4. E: 3. warranty of Charters 12:*

Upon a fine of lands in two Counties, I shall have one writ of Warranty of Charters in one County of the whole, 29 E: 3. *breif 900.* See *F, N.* 135. *F.*

If I enfeoff two of two acres severally, and the one enfeoffeth the other of his Acre, he shall have warranty of Charters against me for both acres, 40 E: 3. 41.

H h h h h

XIII Of



## Warranty of Charters.

### XIII. Of a Reversion.

**H**E who hath but a Reversion, shall not have this Writ, for it supposeth him Tenant of the Land, &c. and therefore a fine shall not be levied upon this Writ to him who hath but a Reversion, *M. 19 E. 2. Fines 127.*

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### XIV. Warranty of Charters by Assignee.

**T**He declaration is good, alledging that he warrant to the plaintiff as assignee of *T.* yet the Writ made no mention that he was assignee, so of voucher, *9 E. 2. warranty of Charters 30. 36 E. 3. warranty of Charters 11.* But *Shard.* denyeth that the Writ lyeth for the Assignee, *Fitzh. 135. D.* That it doth lye for the Assignee.

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### XV. Warranty of Charters by Cause discharged.

**T**He exchange of the Ancestor is holden a good binding against the heir in this writ, he sayd, that he did not hold any land in exchange for the land in demand, *23 H. 3. warranty of Charters 26.*

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### XVI. Execution upon a Recovery in warranty of Charters.

**I**F depending an assise against me, I bring a writ of Warranty of Charters, and recover the Warranty, and the Land is recovered against me, I shall have execution by *Habere facias ad valentiam*, but where I recover the warranty before any Writ brought against me, I ought to vouch the same person against whom, &c. or have a *Scire facias* against him, if the voucher doth not lye depending the plea by him who hath right, *19 E. 3. warranty of Charters 10.* And if the Defendant do acknowledge the Warranty and loss, the award shalbe, that the Sheriff extend the land lost, and give in value, *temp. E. 1.* See of this *Division 3:* and of the execution upon the entry of him who hath an elder right after the warranty recovered, see *22 H. 6. Division 7:* See *Division 6,* throughout.

Note by *Englefeild*, That he who hath recovered the Warranty in this Writ, being afterwards impleaded in an Action in which he may vouch, he shall vouch, otherwise he shall not have in value, *30 E. 3: 30: warranty of Charters 22,* and therewith agrees *F. N. B. 134. I.*

WARRANTY:



# WARRANTY.

## I. What.

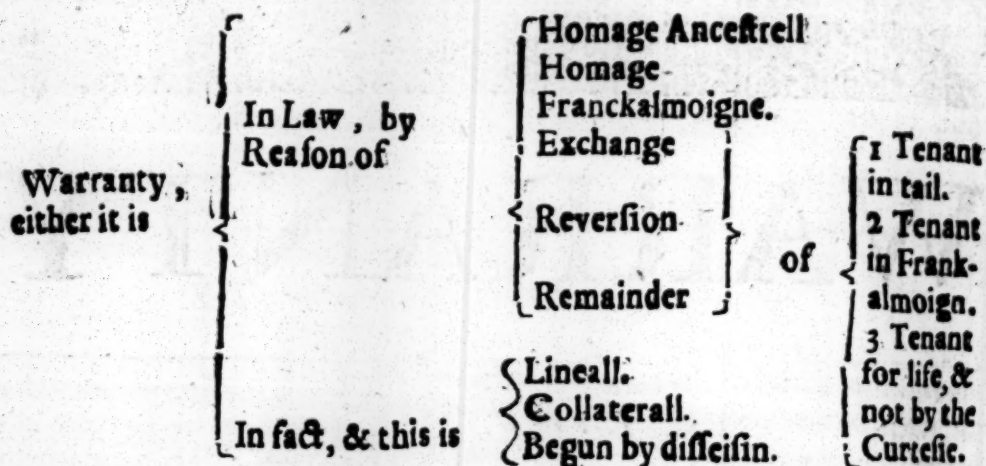
**W**arranty is a Covenant reall annexed unto Land, and descending upon the heir, by which he is rebutted if hee demand the land to which it is annexed, or if a stranger bring an action for the land, then he shall be vouched, or if the party to whom the warranty is made, doubteth that he shall be evicted by suit or entry, he shall be impleaded by warranty of Charter, and this description appears by these books ensuing. For by *Hank*, 14 H. 4. 26. Warranty is a Covenant reall, and for this *Litrl. lib. 3. cap. 13. plac. 59.* saith, that by such a Release of Covenants reall, the warranty is extinct, wherewith *Brooke* agreeth, 20 H. 7. 4. The question was moved, 2 H. 4. 14. of what effect a judgment, *Pro tempore & loco*, is in a *Warrantia Charta*, where it was sayd, that warranty is but a Covenant which shall not bind the Lands of the Grantor, in whose hands soever the same doth afterwards come. *Et ex hoc videtur*, that forasmuch as the warranty or covenant binds not, that therefore the action is brought, to the intent the judgment should bind, &c. and by some, warranty is executory upon the possession and shall be determined and shall enure with the possession, 19 H. 6. 7 4. 20 H. 6. 35. 22. H. 6. 15. *Bracton Tract. 4 lib. 5. cap. 1. Warrantizare nihil aliud est, quam defendere & acquietare Tenentem, & seisinam non transfertur ad Warrantum, sed rei defensio, defendere autem non est rem red- dere.*

*H b b b b 2*

II. How.



## II. How many fold.



## III. The Cause of warranty in generall.

**I**T is agreed that Warranty implyeth in it selfe, recovery in value, and that he which Covenanteth to acquit, ought to acquit the party in fact, and this without the words, that she shall render in value, or acquit, 46 E.3. 28.

## IV. The effect of warranty in generall.

**S**exto Ed.3.6. Fitzb. Warranty 60. by Schard, every warranty binds it self to two effects, either of the vouch by force of the Warranty, and there the man ought to shew in certain of what estate hee voucheth for the recovery in value, or he may rebutt by force of the warranty, and there he shall not be put to shew what estate he claimes, and with this agrees Brooke and Fairfax, 20 H.7.4. 22 H.6.5 2.

# Warranty.

## Warranty in Law.

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### V. Warranty for cause of Homage Ancestrell.

**H**Omage Ancestrell draweth to it warranty, that is, to understand, that the Lord who is alive, and hath received homage of such Tenant, ought to warrant his Tenant, when he is impleaded for the land holden of him by homage Ancestrell, *Lit. lib. 2. cap. 7. pl. 3. 5.* and herewith agrees, *F.N.B. 134. F. 46. Ed. 3. 47. 7 H. 7. 2.*

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### V I. Warranty for cause of Homage.

**I**F a man give land to hold of him by Homage, he shall be bound to warranty after the homage received; but if he grant this Homage and services to a stranger, and the Tenant doth homage to the Grantee, the Grantee shall not be bound to warranty for this homage done &c. by the opinion of the book, but he that made the Tenure and his heirs shall be holden to the warranty, &c. *temp. E. 1. Fitzh. warrantie 90. but 13 E. 1: warranty 91.* In a *Per que servicia*, the Tenant was not compelled to do homage, because he had done homage to the grantor of the services before, who was then alive; but he was compelled to attorn, and to do the other services &c. but it was adjudged that after the death of the grantor, that the Tenant shall do homage to the Plaintiff, and that the Plaintiff shall make warranty to him of the land, notwithstanding that he had done homage before, see the whole case *Per que servicia*, 23.

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### V II. Warranty for cause of Franckalmoigne.

**N**Ote, That if a man give Tenements in Franckalmoigne, he shall be bound to acquittail against all people, and to warranty for him, and his heirs during the grant, *Per Berry and Ingram, &c. P. 7. E. 2. Ward 79.*

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### V III. Warranty by cause of Exchange.

**N**Ote, That it is granted in an Assise, that exchange is a Warranty in it selfe, and good cause in voucher, and where exchange takes not effect in *Forma juris*, here it is not warranty, 45 E. 3. 20 and 14 H. 6. 2: In a Formedon, a deed of exchange came in pleading with assers descended, and it appears not by the book, that there was any other warranty.



warranty but by the exchange, so it appears that an exchange is warranty in law, and it is as strong as warranty by deed. *Fitzh., N.B. 135.b.* saith, that he shall vouch by this exchange to warranty, and he shall also have a writ of *Warrantia Charta* by this deed of exchange, although he hath not words of warranty in the deed, whereto agreeth *Perkins 61.* where a woman lost her dower in an acre of land, because the other who did exchange lost his acre by an elder title, and so recovered this acre in value by vouching to warranty, *M.h.4.Edw.3.52. 3 Edw.3. Fitzh. Dower 129.*

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IX. Warranty by cause of Reversion of Tenant in taile.

**I**F a man make a Lease for term of life, rendring a certain Rent, or make a gift in tail rendring a Rent without deed, and afterwards the Lessee or the donee be sued in such an action where he cannot vouch, there he shall have a Writ of *Warrantia Charta*, against the lessor or Donor, or his heir who hath the reversion, for this reversion and rent reserved makes a warranty in Law, by the statute, *De Bigamis, cap: ultimo*, although he had not any Deed therof, *Fitzh: Nat: Bre: 134. 2 H.7.12. 6 H.7.1. 38.E, 3.32. Brook warranty 29.* that if the Tenant in tail be sued, the reversion is a good cause of warranty to plead, save against him who is to defeat this Warranty with the Reversion.

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X Warranty by cause of the Reversion of Tenant in Frankmarriage

**I**N a Formedon, the Tenant pleaded in bar that his Ancestor by nothing that he had done the discent, gave him the land in frankmarriage by Deed shewed, rendring to him certain Rent, saving the Reversion to him and his heirs, so he is bound to warranty by reason of the Reversion, and that he had assets by discent: *Burton*, seeing that the Deed which he setteth forth doth not comprehend warranty, judgment was prayed, whether as to this, the Law will put us to answer, and durst not demur, and saith nothing descended unto him, but five shillings of rent issuing out of certain land which he held over by the services of 2 s. by the year, and suit of Court four times by the year, for which since he cannot make less fine than 2 s. by the year, and to pay at every Avoidance 10 s. for relief, and so that the 12 d. which remains over doth not countervail for the 10 s. without that, that he hath any other thing by discent, and demands judgment if by such discent, &c: Sir, the land demanded is worth 20 s. by the year: *Clam*, Forasmuch as he hath confessed that he had 5 s. by the year, we

we pray that he be barred for the portion, and of the remainder of the Affsets which disceded unto you, &c. *Seton*, Then you confesse the matter is such as he hath alledged: And after *Kirton* waived the Demurrer, and repeated the matter over as before, so that nothing by discent with issue, and he prayed that his plea might be entred, 31 *Ed:3. Fitz.warranty* 29.

## XI. Warranty by cause of the Reversion of Tenant for life.

**P***Racipe quod reddat* was brought against Tenant for life, who vouched to Warranty *E.* and the Vouchee was bound to the warranty because the Tenant held by Lease of the Ancestor of *E.* for term of life, and because of the Reversion he was bound without shewing any Deed. And the opinion of the Court was, that a man shall be bound to warranty by lease of his Ancestor, &c. otherwise if he disclaim in the Reversion, 14 *E:3. Fitz. War.* 32. *Conc.* 14 *H:6* 25.

If Tenant for life vouch him in Reversion, he shall recover in value, otherwise it is where Tenant by the Curtesie doth vouch the Heir in Reversion: But if Tenant for life do vouch him in Remainder to recover in value, he faileth, 14 *H:6.25.* of his binding, and the Demandant shall recover by it.

## XII. Warranty by cause of Reversion.

**I**F Tenant for life vouch him in Remainder, to recover in value, he failes of his binding, and the Demandant shall recover thereby 14 *H:6.25.* 10 *Ed:3. Fitz. Counterplea of Warranty* 7.

## XIII. The force of Warranty in Law

**N**Ote, in a *Formedon* in *Guild-hall*, it was pleaded that the Ancestor demised a term, &c. saving the Reversion to him, and his Heirs: So he is by reason of the Reversion bound to warranty, and saith, that he hath land by discent in fee, and because he shewed no Deed which could make a Warranty, and otherwise he could not plead a discent to the value, Seisin was awarded, 13 *Ed:3.8. Fitz.Warranty* 35. but there 23. 18 *Ed:3.* this Judgment was reversed. And so note, that Warranty in Law with Affsets, was adjudged a good Bar in a *Formedon* in the Discenter. See there the case 23. at large, wherewith agreeth the case of Frank-marriage, 31 *Ed:3. Fitz:28.*

Vpon a *Sur cui in vita* by the Heir of the wife, the Tenant said, that the



the Ancestor of the Demandant enfeoffed the Tenant to have the same lands in tail, and demands Judgment if against the Feoffment, with this, that he had Assets by descent, &c. and the Deed which he had set forth before was without warranty. *Clam.* In the Deed there is no warranty, so we are out of the case of the Statute. *Kirton*, By force of this Reversion to you descended with Assets, you are bound to warranty. *Knivet*, For that you plead not in Bar but to a Reversion reserved, where the husband could not reserve any right unto him, where he had no right before but only the Frank-tenement in right of his wife, and also he is to defeat the Alienation upon which the Reversion is reserved, and the same thing which he is to defeat cannot bar him, therefore the Court adjudged that the Demandant should recover, 33 Ed: 3. 32. *Fitz: Cui in vita* 4.

In a Formedon in Discender, the Tenant pleaded in Bar a Deed with warranty, with this, that he had Assets by descent in fee by the same Ancestor: And the Demandant said, that it appeared by the Deed that his Father gave the land in exchange, which is now in demand by the Deed, and took other lands of which he died seised, after whose death he never occupied them, but utterly disagreed, without that, that any other lands descended unto him by the same Ancestor, and demands Judgment if by this, &c. and this was held a good plea in avoidance of the warranty, &c. 14 H. 6. 3. And by *Thorp.* 15 Ed: 3. *Fitz. Bar* 255. The Exchange with agreement is one plea, and the warranty with Assets descended is a good plea: And by *Cant.* He who was party, or his Heir shall have the warranty, by reason of the exchange without Deed, and by the same reason the Assignee may rebut you of the Action by Law, 3 Ed: 3. *Itin. North. Fitz. Formedon* 44.

## Warranty in Deed.

### XIV. What shall be said to be Lineall Warranty.

**W**arranty lineall is where a man seised of lands in Fee, maketh a Feoffment by his Deed to another, and bindeth him and his Heirs to warranty, and hath issue and dieth, and the warranty descendeth to his issue, this is a lineall warranty, and the cause is, because if no such Deed with warranty had been made by the Father, then the right of the Tenements should descend to the Heir, and the Heir should convey the descent from the Father, *Lit. lib. 3. ca. 13. Pla. 8. Pla. 11, 12, 14, and 18.*

And by *Schard* and *Wilby*, the Warranty of every Ancestor of them who may have attendred the estate before him against whom warranty is pleaded, although he attendred not the Estate, nor no mention is made of them

them in the Writ, it is not a Bar without Asssets, for it is lineall, 35 Ed: 3. *Fitz. Warranty* 73.

And note, that in every case where a man demands Tenements in fee tail, by writ of Formedon, if any of the issue in the tail, who hath the possession, or who hath not any possession, make a warranty, &c. if he that sueth the writ of Formedon might by any possibility by matter which might be in fact conveyed to him by him who made the warranty by form of the Gift, this is lineall warranty and not collaterall, *Litt. lib. 3. ca. 13. pl. a. 22.*

XV. What shall be said to be Collaterall Warranty.

Collaterall Warranty is, where he that makes the Warranty is collaterall to the Title of the Tenements: and this is as much as to say, that he from whom the Warranty discends cannot convey to himself the Title which he hath of those Tenements, by him that made the Warranty, in case no such Warranty had been made, *Litt. lib. 3. ca. 13. pl. 89. 10. 13. 14.*

Also where a man is collaterall to the Title, and this man releaseth with Warranty, &c. this is collaterall Warranty, *Litt. lib. 3. ca. 13. pl. 25.* wherewith agreeth, 38 Ed: 3. 21. *Fitz: tit: warranty* 9. And the cause for which collaterall Warranty is a Bar to the issue in tail, is because that all Warranties before the Statute of *Glocester, cap. 3.* All Warranties which ever discend to them, which were Heirs to them that made the Warranty, were bars to the same Heirs, to demand any land, except the Warranties which began by Disseisin, and for this the said Statute hath ordained, that the Warranty of the Father shall not bar the Son for those lands which come unto him by the Inheritance of the Mother: And the Statute hath not made nor ordained remedy against the Warranty that is collaterall to the issue in tail: and therefore the Warranty which is collaterall to the issue in tail, is yet in force, and shall bar the issue in tail as it was before the Statute, *Litt. lib. 3. cap. 13. pl. a. 2, 3.*

Three Coparceners alien in fee with warranty; and the question was, whether every warranty shall be collaterall to the other or not, &c. *Brian and Fairfax* held it should, and this was held thirty years then past. *Hussey*, Although it were so, it serves for nothing, 4 H: 7. 18. *quare*, for it seems to *Brook, Br. Warr.* 56. that the warranty of the one is collaterall to the other two, for the parts of the others; for they cannot claim their proper parts by their Sister: But as to the part of him which warranted, this is not but lineall as to the other Daughters, if she dye without issue, for they may claim the part of their Sister which made the warranty, by such as made it.



XVI. *What shall be said to be a Warranty which begins by Disseisin.*

**W**arranty which doth begin by Disseisin, was never a bar to the Heir, for that it began by wrong, and is thus: The Son purchaseth lands, and doth lease the same to his Father for years, the Father enfeoffeth another in fee, and binds him and his Heirs to warranty, and dies, this warranty shall not bind the Son, for he may enter or have an Assise, because it began by wrong, that is to say, by Disseisin, *Lit: lib: 3. cap. 13. pl: 2, and 3.*

In the same manner it is of a Guardian in Knights-service, or Socage, 43 *Ed: 3. 7.* for if they make a Feoffment with warranty, it is no Bar, *Lit: lib: 3. cap: 13. pla. 4.* And so it is by a Tenement by *Elegit*, Statute-merchant, or Staple, *Litt. lib: 3. cap. 13. pl: 3.*

If the Father and Son purchase lands joyntly, and the Father alieneth the whole to another with warranty, and dieth, this warranty shall not bar the Son of the Moyety which belongeth to him of the same lands and Tenements, because as to his Moyety the warrant began by Disseisin, *Lit. lib: 3. cap. 13. pla: 5. Touch agreeth, 22 H. 6. 51. contrary by Harle,* that the Feoffee with warranty shall recover the whole, 13 *Ed: 3. Fitz. Warranty 23.*

If *A.* be seised of a house, and *F.* who hath no right to enter, claim the house and enters, the said *A.* then dwelling in the same, in this case the Frank-tenement shall be adjudged in *A.* But in case *F.* enfeoff certain Barretors, and Extortioners in the Country, to have maintenance of them of the same house, by a Deed of Feoffment with warranty, and *A.* dare not dwell in the house, this warranty beginneth by Disseisin, *Lit. lib: 3. cap. 13. pla. 6.* And so it is where Disseisin and Feoffment are as it were at one time, *Lit: lib: 3. cap: 13. pl: 7.* and herewith agreeth, 11 *Ed: 3. 19 H: 8. 12. by Fitz-james, 46 Ed: 3. 6. 31 Ed: 3. Warr. 22:*

XVII. *Where Warranty shall not bind but where the same is descended.*

**I**f an Ancestor collaterall make a Feoffment in fee with Warranty, and afterwards the Feoffee make a Lease to the Ancestor back again for life, or in tail, or if he lease or give the same land for life or in tail, the remainder over, &c. there the Warranty is suspended for the time, but after the Lease in tail is extinct, he in reversion or remainder may bar the Heir in tail by this Warranty: And therefore see there, that if the Heir in tail sue the Uncle or Ancestor collaterall in his life-time, the Warranty shall not

not serve, *Br. Warranty* 91. and herewith agreeth the case in *Litt. lib. 13. cap. 13. pl. 53.* And besides, where the Ancestor collaterall deviseth with warranty, it shall not bind, for as much as it taketh not execution, or effect, till after his descease, and for as much as the Uncle in his life-time was not bound to warrant, such Warranties could not discend from him to the Issue in tail, &c. for nothing can discend from the Ancestor to his Heir, but only the same which was in the Ancestor, *Litt. lib. 3. cap. 13. pl. 43.*

See the printed Abridgment of Assise, *fol. 38.* That the Warranty shall not be avoided by entry, or action before the Warranty discend, for if he might enter, and would not; nor he shall not recover before the Warranty discend, then when it is discended he shall be barred, *Br. Warranty* 96. and 34 *Ed. 3. Fitz. War. 69.*

XVIII. Upon whom Warranty at the Common Law shall discend.

**T**He Warranty in Gavel-kind Lands shall not discend but upon the eldest Son only, and the younger was not barred thereby, but the Assise was awarded against him, which note well, 44 *Ed. 53. 16.* for by *Littleton, lib. 3. cap. 13. pl. 26.* every Warranty which discends, discends to him who is Heir to him that made the Warranty by the Common Law, and herewith agreeth, 21 *Ed. 3. 21. Br. Warranty* 44. But a Release of the Ancestor in Gavel-kind is a Bar against all men, and 22 *Ed. 4. 10.* and 21. agrees therewith, for a Release shall go after the nature of the Land or Inheritance, and shall be a Bar to all which may claim the land; *Quod non negatur, Br. Warranty* 69. and so it is not a bar of land in *Burrough-English*, for that shall go after the Common Law, whereto agreeth, *Litt. 3. cap. 13. pl. 44, 45.* see 40 *Ass. 22.*

It is granted upon an argument in a Writ of Error, that if a man maketh a Feoffment with Warranty, and dieth, his younger Son, or Bastard may be vouched: but if the Mulier dye without Heir, the Bastard shall not be vouched, for now the Warranty is determined: As where the Lord had been seised by Escheat, and so it seems that the conclusion of the Inheritance shall not stay but betwixt the Mulier and the Heir, and not betwixt strangers, 5 *H. 7. 2.*

Note by *Thirn, 19 R. 2. Fitz. Warranty* 100. That if Tenant in tail alien, and his Son bring a *Formedon*, the Warranty of the Mother, nor any Ancestor of the Mothers side shall be a Bar, if the same Ancestor of the Mothers side hath an Heir of the Fathers side, yet if my Mother releaseth with warranty to my Disseisor, and dye, I shall be barred, &c. affirmed by the Court.

Notwithstanding that by *possessio fratris, &c.* the Daughter hath the



Land, yet the Warranty shall discend to the younger Son: But she shall be vouched for the possession, but the warranty shall not discend upon him no more then upon the Estoppel, whereof the opinion is clear, 35 H:6.34. acc.

Warranty is no Bar in an Assise by him who was born before marriage, 32 Ass:7.

In a *Juris utrum*, the Warranty of the Ancestor is no Bar, *Newton*, So in a VVrit of Entry *Sine assensu Capituli* by a Dean, or Master of a Colledge: But of an Abbot it is clear that it is a good plea, for he is not Heir, 27 H:6. *Juris utrum*, see Abridgment of the Book of Assises, and *Fitz. Warranty* 48. agreeth of a Parson, 34 Ed:3. *Warr.* 71. contrary, for there it is holden, if a Parson be disseised of Land of the right of his Church the release of his Brother with warranty, shall bar him for his life in Assise.

18 Ed:2. *Juris utrum, tamen credo*, that it is not so; for if an Abbot or Prior enfeoff me with warranty, I cannot recover in value against his Successor, unlesse the Covent be bound to warranty, and by consequence the same Law of a Parson of a Church, where the Ordinary and Patron do not confirm.

5 Ed:2. *Fitz. Avowry* 207. if the Heir of the Mothers side, having by discent, alieneth with warranty, and dieth, and this Feoffment be before the Statute, *Mal.* saith, That the Heir of the Fathers side shall be vouched for the Services belonging to him: But *Berry* Justice said, that *Cong sanguineus ex parte matris ligatus erit*, for he shall have the Services, which is ad judged there accordingly.

XIX. What words make a VVarranty, and how far they shall extend.

A VVrit of *Warrantia Charta* was brought in the County of Hertf. and the land that was warranted did lye in the Counties of Hertford and Bedford, and the Plaintiff supposed in his Count that he was sued by Assise before *R. Catlin*, and *A. Brown*, who were Justices of Assise in *Com. Bed. sed non in Com. Hertf.* and for this it was holden by the Court that it was nothing worth: And also the VVarranty was but against the VVar-rantor, and his Heirs, *Et ideo clare per Curiam*, the writ doth not lye, if the words *Dedi & concessi* be not in the Deed, *Dyer fol: 221. pla: 17.*

This word *Dedi*, comprehends in it self a warranty against the Feof-for, and so doth not the word *Concessi*, *Park 26. chap. 3 1. E: 1. Fitz. Feoffment* 118. *Fitz. Na. br. fol. 134. 6.* that it is a warranty against the Feof-for, but not against his Heir, unlesse these words, *Ego & heredes mei omnia predicta terr. & tenementa, &c. Warrantizabimus, &c.* 3 H: 7. 12. 8: H. 7. 1. 39 Ed: 3. 26. 11 H. 4. 41.

Also there is found in divers Deeds these words in Latine, *Ego & heredes mei, &c. Warrantizabimus & imperpetuum defendemus*. VVe are to see what effect this word *Defendemus* hath in such Deeds: And it seemeth it hath not the effect of VVarranty, nor comprehendeth any cause of warranty, for if it should be so that it taketh effect, or a cause of warranty, then it should be put in some Fines levied in the Kings Court, and a man never saw that this word *Defendemus* was in a Fine, but only this word *Warrantizabimus*: By which it seemeth that this word *Warrantizo*, maketh warrantize, and is the cause of warrantize, and none other word in our Law, *Lit: lib: 3. cap. 13. pla: 42.* but in 2 *Ed 4. 15*. The warrantize is where he is sued, but the word *Defendemus* is to save the party, that no stranger enter upon him.

Note, that by the best opinion, that *Dedi* alone without *Concessi* is a good warranty by the Statute *de Bigamis*, which speaks in the end *Ratione proprii feodi*, yet contrary, *De concessi tantum*, quare for contrary by *Radford*: And if a man give land with warrantize, the Donor thereby is not bound to warrantize, for he ought to have these words, *Quod ipse & heredes sui warrantizabunt* to the Donee, & *heredibus, &c.* The same Law is of a Grant of Rent, *Cum clausula distinctionis* he shall not distrain without more, &c. *11 H. 4. 41.*

In a *Praeipe quod reddat* against *I.* who vouched *L.* who demanded what he had to bind him to warrantize, *J.* shewed a Deed of Feoffment without cause of warrantize, and it bound this *L.* by this word *Dedi*, and it was good, see the rest of this case, *39 Ed: 3. 36. Fitz. War. 11.* Hereto agreeth the Grant of the Priorelle of *S.* in these words, *Sciant presentes & futuri quod ego Priorissa, &c. per consensum & unanim. totius conventus dedi & concessi & hac presenti carta confirmavi, &c.* and because that *Garrantia* was not in it, *nec aliqua mentio warrantia habetur, petit iudicium & consideratum est, quod prad. Priorissa ei war. &c. Anno 13 Ed: 1. apud West. Fitz. war. 92.* doth agree with this, *Anno 47 H. 3. Itin. Cornub. Fitz. warr. 99.*

In chartis ubi continetur, *Dedi & concessi tale Tenementum sine homagio, vel sine clausula qua continet warrantiam & tenendum de Donatoribus, & heredibus suis per certum servitium, concordatum est per eosdem Justic. quod donatores & hered. sui teneantur ad warrantiam. Ubi autem continetur Dedi & concessi, &c. Tenend. & capitalibus Dominis feodi, aut de aliis quam de Feoffatoribus vel hered. suis, nullo servitio sibi retento, sine homagio vel sine dicta clausula, hered. sui non teneantur ad warrantiam, ipse tamen Feoffator in vita sua ratione doni proprii tenetur warrantizare. Statut. de Bigamis edit. 4 Ed: 1. cap. 7.*

In 6 *Ed. 2. Fitz. Voucher 258.* the Deed was thus, *Dedi & concessi tali, & heredibus suis tenendum de Capitalibus Dominis*, and the clause of warranty was thus, *Eo ego & hered. mei contra omnes gentes acquietabimus & defendemus imperpetuum.* Past. By this Deed we ought not to warrant the Land, for by this word *Dedi*, no man is bound to warrantize, but the



the Feoffor to the Feoffee, but the Feoffee is dead, and you vouches as heir, by which Judgment &c. for the clause of warranty doth not specify any certain person, which ought to be warranted, but because the warranty is generall, it was adjudged by *Berry*, that he shall warrant.

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XX. *In deeds of Feoffment with Warranty, without saying what thing, or to whom, how far it shall extend.*

BY all the Justices, except *Baldwin*, it was agreed, that this word shall warrant the said *J. G.* and sheweth not what thing, the Law shall make construction of this word (shall) that *W.* ought to warrant the Land of which the communication is made, and for this *Shelley* put the case of 6 *Ed. 2.*, which *Baldwin* denied to be Law. In Dower, a man made a Feoffment to one and his heirs, and by the same Deed bound him and his heirs to warranty, *contra omnes Gentes*, and doth not shew certainly to whom he ought to warrant, nor how long the warranty should endure, and yet in the book it is ruled, that the Feoffee to whom the estate was made, had a Fee simple in the warranty, as well as he had in the Land, but if the meaning of the warranty appeareth fully by expresse words, the warrantie shall not extend further. As if a man make a Feoffment in fee, and warrant to the feoffee onely, without speaking of his heirs, there the warranty shall be said to be but for life, *quia stricto accipitur*, *Dyer fol. 42. pla. 12.* and 13. agrees with *Dyer fol. 46. pla. 2.*

See Voucher in *Fitzh. 258. per aliquos*, that warranty by *Dedi & concessi*, doth not hold place, but between the Feoffor and the Feoffee. *Quere inde*, and what by these words, *Ego & heredes mei acquietabimus & defendemus*, and saith not, *quid* nor *cui warrantizabunt*, and yet held well by the Court, 6 *Ed. 2. Fitzh.* and likewise there was a clause of warrantize made. *Ego & hered. mei tenementa prad. warrantizabimus*, and saith not, *cui illa warrant.* and yet held good by the Court, *Voucher Fitzh. 262. 12 Ed. 2. 6 Ed. 2. Brook Warranty 8.* whereto agreeth 14 *H. 4. 13.* by *Hanck.* this shall have relation to the words of the deed before, to the Feoffee, his heirs &c. and so is the form in a Fine, and so it is ruled *Tempore 2. Quod omnes Justiciarii affirmaverunt*, that the warranty was good by that manner, and *Perkins 49.* agreeth thereto.

See estates 18. that where a man makes a Feoffment to two, & *heredibus*, without  *suis*, that for the uncertainty, this is not good, and yet by *Keble* and *Genney* Justices, a man enfeoffes another in Fee, and warrants the Land, *contra omnes gentes*, and saith not, to whom he warrants it, yet this is a good warranty to the Feoffee, for this shall follow the words of the Feoffment, otherwise it seemeth, if it were made to two, *ut supra 22 Ed. 4. 16.*

What

# What persons by their warranty shall barre Others.

## XXI. Warranty of Tenant in Dower, and of the mother.

**I**F a man that is an inheritor take a wife, who have a son between them, and the father dieth, and the son entreth into the Land and endowes his mother, and after the mother aliens this which she had in her Dower to another in fee with warrantie accordingly, and afterwards dies, and the warranty descends to the son, now the son by the Common Law shall be barred to demand the same Land, because of the said warranty, and such Collaterall warranty of Tenant in Dower, had not any remedy by any Statute before that *Littleton* wrote his book, *Lit. lib. 3. cap. 13. pla. 33.* herewith agreeeth 22 *Aff. pa. 37. Brook warranty 45.* where the mother of the plaintiff, being Tenant in Dower, leased the Land to her villain with warranty, and there because that he did not set forth, that the Tenant in Dower died during the Seisin of the Villain, so that the Collaterall warranty might descend upon this possession, therefore the assise was awarded, and by 31 H. 8. *Br. VVar. 79.* If the Husband and wife alien Land of which she is dowable, there to have Collaterall warranty, it is good to have the warranty of the wife against her and her heirs, and then if she hath issue by the Husband, and she and the husband die, the warranty shall be collaterall to the issue, because the Land comes by the father, and not by the Mother.

In an assise *de mort d'ancestor*, of the Seisin of his father, the warranty of the mother was pleaded in bar, and this was adjudged a good bar, without saying that the demandant had assets by descent &c. 12 *Aff. P. 9. Fitzh. warranty 64.* So temp. Ed: 1. *Fitzh. warranty 86:* in a Writ of Right and demand of Seisin of R. his ancestor, the Tenant pleaded the feoffment with warranty of one Alice the wife of this R: and ancestor of this demandant, whose heir the demandant is. *VVar:* the Statute of *Glocester* ordains, that the heir shall not be barred, if the husband alien the Right of his wife, nor by consequence the heir, if the wife alien the right of her husband, and the Statute grants a Writ in *casu praeviso*, and by equity in *consimili casu*, and so it shall be here, *Br: in consimili casu*, when a man is to have by Writ, and not by plea pleaded. But the opinion of some is, that as great mischief is in the one case, as the other, but because the Statute now makes mention of it, we can do no more then the Statute willeth, by which the demandant was non-suit by the advice of his Councell.

If tenant in dower alieneth with Warrantize, her heir being within age, and also at the time that the warranty descended, the heir may enter, but



but if he were at full age at the time of the descent of the warrantize, and entred not in the life of the Tenant in Dower, there peradventure the heir shall be barred by such warranty, because it shall be accounted his folly, that he being of full age entred not in the life time of the Tenant in Dower, *Littleton lib. 3. cap. 13. pla. 35.*

But novv by the Statute made. 11 H. 7. cap. 20. it is ordained if any Woman discontinue, alien, release or confirm, with warranty, any lands, or tenements, which she held in Dower, for term of life, or in tail of the Grant of her former husband, or his ancestors, or of any other seised to the use of her former husband, or of his ancestors, that all such warranty shall be void, and that it shall be lawfull for him who shall have those lands after the death of that woman, to enter, *Litt. lib. 3. cap. 13. pla. 36.*

By *Thirning*, if Tenant in tail alien, and his son bring a Formedon, that the warranty of the mother, nor any ancestor of the mothers side shall bee a Barre, if the same Ancestor of the Mothers side hath an Heir of the fathers side, because the ancestor of the fathers side is more worthy, and more near, and also the descent cometh of the fathers side, yet if I be disseised, and my mother release with warrantny and die, I shall be barred, and this was affirmed by the Court, *Quare the diversity, P. 19 R. 2. Fitzh. war. 100.*

See the Statute of *Glocester cap. 8.* That if a woman sell or give lands or tenements, which she holds in Dower, the heir shall recover by writ of entrie.

In an Affise *de mortdancestor*, of the Seisin of his father, the warranty of his mother was pleaded in Bar &c. and this was adjudged a good bar, without alledging that the demandant had assets by descent &c. *12 Aff. pa. 9.*

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XXII. *Warrantize by Tenant by the Courtesie, or seised in Right of his wife, and the exposition of the Statute of Glouc. cap. 4.*

**N**ote, that *Littleton, lib. 3. cap. 13. pla. 37.* saith, that some thought, if the husband levy a Fine of the lands of his wife with warranty, that this warranty is a bar, because the Statute saith, that the alienation of the husband with warranty, where no Fine is levied, it shall not be a bar without assets, and so, he said, was the opinion of Sir *Richard Newton*, and other Justices in their times, and further, that the warranty of the husband, by the Release where no demise, nor alienation was made, shall bar, because the Statute speaketh of a demise, as if the husband by the release, where the demise nor alienation was made, shall be a bar, because the Statute speaks of a demise, as if the husband release to the disseisor,

seisor, or to one that is in by the disseisor &c. and some say that the words (where no Fine is levied) shall be understood where no Fine is levied by the husband and wife &c. 14 *Ed. 4 Fitz. warranty 5. Lit. lib. 3. cap. 13 pl. 37:38.39,40. and pl. 41.* these words, where the heir demandeth the heritage or marriage of his mother, this word (or) is a disjunctive, and is as much as to say, if the heir demand the heritage of his mother, that is, the Tenements which his mother had in fee simple, by descent or by purchase, or if the heir demand the marriage of his mother, that is to say, the Tenements, which were given to his mother in frank-marriage.

In a formedon in descender of a deed made to *Agnes*, his Grandmother. *Scroop*, one *W.* your Grandfather, whose heir you are, enfeoffed one *7.* in tail with warrantize, and we are heir to *7.* judgment &c. *Ald.* after the death of *Agnes*, this *W.* held by the law of *England*, judgment, if by his deed. *Scroop*, The Statute of *Glocester* mentions not this Writ, but the writs of *Ayel*, *Besayel*, and *Cofinage*. *Ber.* the Statute helps him in everie Writ, where the Husband aliens the right of his wife &c. which hold &c. and if he cannot put all the cases, yet he will put a case more hard, and by so much intend that lesse is remedied, and for this if the heir bring his Writ of Right, he shall as well be releaved there, as in the writ which is given him by the Statute, viz. the *Mortdancestor*, for which &c. *Scrope*, he had assets by descent, whereupon at issue, and others *à cont.* &c. 11 *Ed. 2. Fitzh. war. 83.* but 5 *Ed. 4. Br. warr. 95.* If Tenant by the Courtesie alien with warranty, and die, and the heir bring his writ of Right, he shall be barred by the warranty, although no assets be descended, contrary, if he bring his action possessory, *secundum Statutum, Glouc. cap. 3. & 8. Ed. 2. Fitz. Warranty 81.* non compos mentis was brought of land aliened by the father, Tenant by the courtesie, and allowed good.

In a Writ of Right of the Seisin of *Alice* his mother, the Tenant pleaded a Release, and quite claim with warranty made to him by the father of the demandant, whose heir the Demandant is, Judgment &c. *Warr.* We have nothing by descent &c. Judgment whether by this deed, *Ass.* This deed was made before the Statute of *Glouc.* and so bars at the Common Law, without assets; therefore by the Court he took nothing by his writ, *Ed. 1. Fitz. warranty 87.* and 7 *Ed. 3. 52. Fitz. warranty 47.* where the Tenant by the courtesie acknowledged a Fine with warranty, and no assets descended to the heir, and *per Curiam*, if the Tenements were comprised within the Fine, he is barred, and the reason is, because the Fine was levied before the Statute of *Glouc.* whereto agreeth 31 *Ed. 1. Fitz. warranty 95.*

At the Common Law, the warranty of Tenant by the courtesie was Collaterall, and is so now, as I conceive, but it shall not be a Bar in *Mortdancestor*, *Ayel*, or *Cofinage*, unlesse assets in fee descend *in facto & re*, where before, the assets were but intended in Law &c. and this Statute of *Glouc.* is taken strictly, for I believe the Law at this day to be, that if



the heir enter not upon the alienee in *vita patris*, he shall be bound and barred from his entrie by the warranty, and so where the Father disseised releaseth with warranty, and dieth, the heir shall be barred without assents, of action and Entrie also, because it is no alienation: also in the last point of the Statute of *Glouc.* of alienation in *vita uxoris* of the heritage or marriage of his wife, if he alien the purchase of his wife with warranty, he is out of the Statute, because heritage or marriage, shall not be intended purchase, & *pro hoc vide magna Charta cap. 7. de matrimonio & hereditate* of the wife, and it was made to restrain the liberty of Tenant by the courtesie, *Dyer fol. 148. pla. 78.*

### XXII. Warranty of Donee in Tail.

**I**T seems by the Book of 41 *Ed. 3. Fitz. Warranty* 16. if Donee in Tail make a Feoffment with warranty, and dieth without issue, the donor shall be barred, because before the Statute was made, that at the common Law after issue, the Donor who was a stranger shall be barred, but in the principall case he is privy in blood to the Donee, and therefore he is out of the mischief of the Statute, and so out of the compasse; and *Finch* saith, that he hath heard *Hertl.* who was at the making of the Statute, who expressed the mischief for which it was made, 15 *Ed. 3. Warranty* 26. it is doubted, and adjourned, 10 *Ed. 3. 14. doubted.*

27 *Ed. 3. 83.* In a Formedon in Reverter, the deed of the ancestor of the Demandant was pleaded in Bar, which ancestor was Tenant in Tail, it is no bar against the Donor, for the Statute recites the mischief, *scil. Quod donatores fuerint exclusi de reversionibus huc usque*, and the heirs disinherited, so to restrain such a point was the Statute made, *Quod voluntas Donatoris observetur &c.* 6 *Ed. 3. 56.* *Hertl.* saith, that he knows the Law to be, that he in Reversion shall not be barred without assents.

7 *Ed. 3.* The opinion was, that if Land be given in Tail, the Remainder to another in fee, he in Remainder made a Feoffment with warranty, and died, and his heir was barred in a Formedon in Remainder, because that the Statute, *Quod voluntas donatoris observetur*, and as to the Reverter or descender, but not of him in remainder: and *Schard* said, if Tenant in Tail in remainder make a Feoffment with warranty, that this shall bar the issue, for he said, that he in remainder, what estate soever he demands, is not helped by the Statute, 4 *Ed. 3. 56.*

### XXIII. Vvar.

XXIII. Warranty of Guardian in Chivalry, or in Socage.

**I**F Guardian in Chivalry, or Guardian in socage make a Feoffment in Fee, or in Tail, or for life with warranty. &c. such warranty shall not be Bars to the heir to whom the Lands shall be descended, because it begins by disseisin, *Littl. lib. 3. cap. 13. plea 4.* whereto agrees *H. 16. Ed. 3. Fitz. Warranty 20.* and so of a Guardian for nurture, it is by disseisin, *43 Ed. 3. 7.*

XXIV. Warranty of an Infant.

**W**arranty of an Infant is void, and yet if an infant and a man of full age make warranty, both shall be vouched, and the age being found, it seems that the other shall warrant the whole, *48 Ed. 3. 12.* see *Br. Tit. Baron & feme.*

XXV. Warranty of a Feme sole.

**C**ommunis opinio fuit, That if a feme sole be bound to warrant Land to me, and *A. B.* hath cause of action thereof, and he take the same woman to wife, and afterwards sue me, he shall be bound during the coverture, for I may rebut him by the warranty which I have of the wife of the Demandant; *Quare*, and such a Case was *M. 13. Ed. 3. tamen alibi dicitur*, that if he to whom the warranty was made, had married the woman and had been sued during the Coverture, the warranty is lost for ever, and if the husband grant in an action, that the warranty is by reason of his wife, and save not his action by protestation, he shall by this be barred in an action taken of his own seisin, if the wife be yet alive, *13 Ass. P. 10. Br. warranty 43. & 70.*

XXVI. Warranty of not sound memory.

**I**N Entry, supposing that he hath not entred, but by *H.* who hath wrongfully disseised *VV.* his brother, the Tenant said, that *H.* is the father of the Demandant, whose heir the demandant is, which *H.* enfeoffed the Tenant with warranty, and demands Judgment whether against &c. the Demandant saith, that *H.* was not of sound memory at the time &c. to which the Tenant was compelled to answer, whereupon he saith,

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that



that he was of sound memory, issue taken &c. *M.8 E.2. Fitzh. Warranty* 80.

XXVII. Warranty of an Assignee, or the heir of the Assignee, or the Assign of the heir in tail, or the Assignee of the Assign, and who shall be said to be the Assign of the Tenant in tail to rebutt, &c.

**I**N an Affise the tenant rebutted by the warranty of the Ancestor of the Plaintiff, whose heir, &c. and he was not suffered without shewing the deed of assignment, no more then he could vouch as Assign. *Tamen* 42 *Ed.3.19.* He may rebut by a *que* estate, without being put to shew how he had his estate, 22 *Aff. pa.* 88. *Br. warranty* 47. *tit. Formedon* 15. That where a man gave land in tail, and did warrant the land to him, and his heirs and Assignes, and he did alien in fee, and died without issue, this warranty shall be a bar in a Formedon in Reverter, 7 *E.3.46: E.3.4.* and if Tenant in tail with warranty enfeof his son being of full age, he shall not deraign the warranty as heir, but as Assignee, otherwise it is if within age, then as heir, 40 *E.3.44.*

19 *Ed.2. Fitzh. warranty* 84. In a Formedon in Descender against T. upon a grant to one H. father of the Demandant, whose heir the Demandant is. *Wilby*, one B. your Grandfather gave these lands to one R. and bound him and his heirs, and to his Assignes, to R. his heirs and Assignes, and we say that R. enfeofed our Father, who is heir &c. so if we were sued of a stranger, you are bound to warrant Judgment whether against the Deed, and we are heir of the Assignee of R. *Schard*, the heir of the Assignee is not named in the warrantize. *Stone*, The right which was in the one descends to the other, and so *Schard* pleaded another plea.

A gift in tail and warranty to the heirs and Assignes, and yet the heir in tail shall be helped by this, *Per Caunt* and *Herl*, contra *per Trew* 7 *E.3.34. Fitz. warranty* 44.

Note, that the Assignee of an Assign in an Affise of Novel Disseisin did rely upon the warranty of the Ancestor of the plaintiff in Barr, and *Shard*, notwithstanding awarded the Affise, 24 *E.3.32. Fitzh. warranty* 40. but otherwise by the Court, and that the Assignee of an Assign shall rebut, by force of the warranty, him who made the warranty and his heirs, 38 *E.3.21. Fitzh. 10.* and 12 *Ed.2. Fitzh. voucher* 263. Assignee of an Assign, vouched the first feoffor to warranty, and granted by the Court.

14 *E.3. Fitzh. warranty* 33. *Per Schard*, Many men conceive that the Assignee of the heir shall have as much advantage of the Warranty, as the Assignee of the Assign of the heir, by deed, which contains warranty to them, and to their heirs and Assignes, in a Formedon, 10 *Ed.3.9.* Where the

the Assignee of the heir had advantage of the barr by the warranty, &c. vi:7.E.3. agrees. and see 19 E.2. *Termino M.* that the heir of the Assignee pleaded warranty made to a man, and to his heirs and Assigns, and held a good plea, whereupon the Plaintiff was non-suit. 14 E. 3. *Fitz warranty* 33. agreed *Anno* 13 E.1. *Fitzh: Warranty* 93.

*Scire facias* out of a fine by which *I.* acknowledged the Tenements to *W.* for life, the Remainder to *P.* in tail, and if he died without heir, &c. the Remainder to *C.* and to his heirs &c. and the right heir of *C.* sued this Writ &c. *Mowbray*, One *Beatrice* your Ancestor &c. enfeoffed *I. S.* in fee with warranty, and bound him &c. to warranty &c. which *I.* enfeoffed one *T.* and took back the estate to him and his wife against whom this Writ is brought. *Seaton*, This *B.* was issue in tail, and you surmise not that we have assets by descent, neither are you they to whom the warranty can extend, for the wife is the Assignee of an Assignee &c. and because that the Husband was privy to the Warranty, and he and his Wife may vouch the Husband, so by Voucher to come to Warranty, it seemed to the Court that he might plead, whereupon *Stone* saw the opinion of the Court and imparled, &c. 16 E.3. 56. *Fitzh. warr.* 98.

### XXVIII. Warranty of the halfe blood.

**I**F Tenant in Tail hath issue two daughters by severall Venters, and dies, and the Daughters enter, and a stranger disseiseth them of the Tenements, and one of them releaseth to the Disseisor all her right, and binds her and her heirs to warranty, and dies without issue, in this case the sister who surviveth may well enter, and out of the disseisor of all the Tenements, because that such warranty is not a discontinuance, nor a collateral warranty to the sister which surviveth, because they are of the halfe blood, and one cannot be heir to the other according to the course of the Common Law, but otherwise it is, where there are Daughters of Tenant in taile by one and the same venter, *Littleton lib:3: cap.13. pla. 46.*

### XXIX. Warranty of him which is in by estate of another.

**S***Cire facias* out of a fine against a tenant, the husband and his wife were received for the default of the Tenant, and shewed to the Court how the husband and wife did lease to the Tenant the Tenements for term of life, saving the Reversion to them, and to the heirs of the wife, and shewed the Deed of the Ancestors of the Demandant, with warranty to the wife, to him, and to his heirs of his body, saving the Reversion, &c. and demanded judgment whether against &c. *Belknap*, By the Deed shewed, the:



the wife hath nothing but the fee tail, and she hath reserved the reversion of the fee, of which shee is now received, whereupon judgment, if to this warranty, which extends it self to another Estate, the Law will put us to answer. *Finch*. If she were to dereigne the warranty, she shall not be warranted of another estate, but she may counterplead the warranty, but in this case of Rebutter, not, *M. 45. E. 3. 18.*

Note that *Hill* said, If Tenant in Dower alien in fee with warranty, and a writ be brought in the life time of the Tenant in Dower, and before the time of the plea, the wife dye, by her death, and her warranty the heir shalbe rebutted. *Scrope* Justice sayd, the Law was otherwise, for he might alledge, that he took his fresh suit upon the alienation living the Tenant in Dower, he shall not be rebutted by the Warranty of the Tenant in Dower after her death &c. *3 E. 3. Itin North F.*

Formedon in Descender brought by *W.* against one *C.* upon a Deed made to *B.* and *C.* his wife. *Belknap*, One *R.* Great Grand-father of *W.* now Demandant, gave the lands to *B.* and *C.* his wife, to them and their heirs in fee, and bound him and his heirs to warranty, and *C.* dyed, and *B.* the husband survived, whose estate the Tenant hath, Judgment, whether against the Deed of his Ancestor, &c. *Cheld*, This *R.* is the same person which we have supposed who gave in fee tail to the same *B.* and *C.* and so his plea contrary to our writ, for which we do aver our Writ. *Belknap*, I rely only upon the warranty: *Cheld*, shew me then how you have his Estate. *Th.* The greatest stranger in the world shall be received to bar you by the warranty, without shewing how he hath his estate; but in case of voucher, he shal not be received; and this I would have you answer. *Cheld* Not the Deed of *R.* our Ancestrell issue, and others of the contrary, *T. 42 E. 3. 19.*

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*Warranty of Tenant for life.*

**W**Here the Tenant for life doth alien with warranty &c. and dieth, and the warranty discends to him who hath the reversion, or the Remainder, they shall be barred by this Warranty, *Littleton lib. 3. cap. 13. pl. 34.*

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**XXX. Warranty of Tenant by Statute Merchant, or Staple, or Elegit.**

**I**F Tenant by *Elegit*, Tenant by Statute Merchant, or Tenant by Statute Staple, make a feoffment in fee with Warranty, this shall not barr the heir that ought to have the land, because such warranties begun by disseisin, *Litt. lib. 3. cap. 13. pla. 3.* So

So in an Affise, if he claim by *Elegit*, or by Statute Merchant, the warranty is no barr, otherwise it is if he claim by Inheritance, 15 H.7.9.

## What persons shall be barred by Warranty.

### XXXI. *Whether warranty shall bar the King.*

IT was found by Office, that King H. great Grandfather of the King that now is, was seised of the Mannor of C. and the Mannor granted unto Edward, Earl of Cornwall, in tail, saving the Reversion, and it was found that Edward died without heir of his body, whereby the Mannor reverted to the King, whereupon came M: Cheselden, wife of W. Cheselden, and saith, that not acknowledging the intail &c. the sayd Edw. Earl of Cornwall gave the same Mannor by this Deed, which is here with warranty to one William Chedwich, to him and his heirs for ever, in exchange for another Mannor, which the said W. granted to the sayd Edward, and his heirs, and saith, that the sayd Edward was Ancestor of the said Edward, Grandfather of the King, That is to say, Cofin, and sheweth how Cofin, &c. and saith that Affets did descend to the sayd Edward, Grandfather to the King that now is, by the same Edward in fee simple, that is to say; the Mannors of A.B. and C. in the County of S. Judgement, whether against the said Deed which comprehends a Warranty, and the said Warranty descended to the Grandfather of the King, whereby the right of the Reversion was extinct in the person of the sayd Edward, Grandfather of the King, &c. he ought to be impeached, and shew how he was in of the estate of VV. Chend. Belknap, Seeing that you do not deny that Edw. who aliened had but a fee tail, so the said alienation was to the disinheretance of the King, who prayed Judgment, &c. and after search made, it was found upon record, that Edward died seised of the Mannors in fee simple, which descended unto Edward Grandfather of the King that now is, as it was alledged by Margery, for which Margery had restitution of the said Mannors, &c. 45 Aff.P.6.

And 6 E 3.56. *Fitzh. tit. warranty* 61. In a *Quare impedit* by the Earl of Cornwall, against the Bishop of R. T. late Bishop of R. Predecessor, &c. did grant and release all the right which he had in the Advowson of S.B. to the Earl of C. and his heirs, and in exchange the Earl of C. did grant an Acre of Land in such a place, and the Advowson of the the Church, which is now in demand, and two other Advowsons to the Bishop of R: and his Successors, and did bind him and his heirs to warranty, and the Warranty descended to the King that now is, who hath affets



by discent: and by *Herle*, If the King hath by discent, this shall bind him, wherefore you ought to sue a Writ out of the Chancery to search in the Records of the Exchequer, if he had assets, and after the plaintiff was non-suit, and the Bishop had a writ to the Bishop, and 39 E. 3: 11. *Fitzh. Ayd De Roy* 52. The King did grant Ayd by advise of the Court.

A man shall recover in value against the King by petition after ayd had of the King, if he had warranty with clause of recompence, but his clause ought to be entred upon the Ayd prayer of the King, otherwise he shall not recover in value by petition, 9 H. 6. 4. and 9 H. 6. 56. In a *Quare Impedit*, it was doubted whether the word *Warranty*, were sufficient to recover in value against the King, without this word (*In recompence*) *Per Babington*. *Quare*, for *Videtur*, that he should, and by *Mertin*, an Advowson with warranty is good Assets.

Upon a *Scire facias* if the King grant land unto me and to my heirs and grants that if I be sued or lose in any manner, (unless by mine own act) that the King will render me in value other land, this is a good warranty against the King. 39 E. 3. 12. writ of warranty 37.

In an Assise of the office of keeper of *Woodstock* Park, and the office of Gate-keeper for the same Parke, of the grant of the King for term of life, the Defendant made his Title by another grant made before by King *Edward* the fourth, by this word *Concessimus*, and prayed Ayd of the King, *Et Justiciarii negaverunt auxilium*, but the Reporter held that he should have ayd by these words, *In statuto de Bigamis viz.* If the King shall ratifie the act of any man in another mans estate, or shall grant any thing to any man, &c. it shall not be superseded, but when afterwards this shall be made known to the King, it shall without delay be proceeded in, and this very word (*Concessimus*) hath as much force as *Dedimus & Concessimus*, for the Statute shall be taken disjunctively and not copulatively, which is not so, for the statute *De Bigamis est*, *Dedimus & Concessimus*, 2 H: 7: 7.

### XXXII. Whether warranty shall bar him in Remainder.

**I**N a Formedon in Remainder, the Demandant was barred by warranty of the Uncle, 7 E. 3. 50. *Fitzh. warranty* 45. and 4 E. 2. 56. *Fitz. warranty* 58. In a Formedon in Remainder, the Demandant was barred by the Feoffment with warranty of the Donee in tail.

By *Finch*, If there be Tenant in taile, the Remainder to *E.* in tail, the Remainder to *C.* in tail. and the Tenant in taile dyeth without issue, *E.* in the first Remainder makes a feoffment with warranty, and hath issue and dyeth, and after the issue dyes without issue, and *C.* in the second Remainder be heir to him, he shall be barred by this Warranty, although the issue of *E.* hath nothing by discent, so that he was not barrable; but Serjeant *Kirton* was of a contrary opinion.

### XXXIII. Whether

XXXIII. Whether Warranty shall bar him in Reverter.

**I**N a Formedon in Reverter, The deed of the Tenant in tail, Ancestor of the Demandant was pleaded in barr, and the Plaintiff durst not demur; but traversed the Deed, &c. 27 E.3.83. *Fitzh. Warranty* 42. whereto *Herle* agreeth, 7 E.3.34. *Fitzh. Warranty* 44. But 14 E.3. and 5. the opinion of *Herle* was that the warranty of Tenant in tail, &c. was no bar to the donor, because the Statute rehearseth the mischeif that is to say, *Quod donatores fuerint exclusi de reversionibus huc usque*, and the heirs disinherited. so to restrain such point was the statute, *De donis conditionalibus*, made, *Quod voluntas donatoris de cetero observetur*, &c.

In a Formedon in Reverter, and the count was, that I. his Ancestor, granted to one T: in tail, who dyed without heir. *Stouff*, One T. Uncle of the Demandant whose heir he is, enfeofed the Father of the Tenant with warranty, whose heir the Tenant is, and demanded judgment whether &c. *Scot*, This T. is the same person to whom this gift in tail was made, who aliened in estrepement by the statute against them in Reversion, as against them in the Discender, &c. *Stone*, Then you confess that this is the deed of your Ancestor: *Parnel*, Yes. *Stone*, Now is the whole upon one Judgment, 10 E.3 14. *Fitzh. Warranty* 53. vide 31 E.3. *Fitz. Warranty* 28.

XXXIV. Whether warranty shall bar the Heir in Burrough English.

**W**ARRANTY is no bar but to the eldest, although it be of land in Gavelkind, or Burrough English, for it shall follow the order of the Common Law, but a release shall follow the nature of the Land or inheritance, and shall be a bar to all which may claim the land, which is not denied, and thereto agreeth, 22 Ed.4.10: 21 Ed.3.21. *Br. Warranty* 69. and by *Littleton* fol.166. pla.44. collateral warranty of such Tenements where the warranty discends upon the eldest son, &c. this shall not barre the youngest son, who by such custome inherits, and by him, if tenant in tail of Tenements in Burrough English, discontinue with warranty, &c. and hath issue two sons, and dieth seised of other lands or Tenements in the same Burrough in fee simple to the value or more of the Tenement in-tailed, &c. yet the younger son shall have his Formedon of the Tenements tailed, and shall not be barred by the Warranty of his Father, though Asses descended unto him in fee simple from the same Father, according to the custome; because that the warrantize doth descend upon the elder brother who is in full life; &c. and not upon the youngest son.

Hereto agreeth, H. 13.H.4. *Fitzherbert Warranty* 94. Where a Formedon



medon in the Discender was brought by one R. according to the custome of the Town, that the Lands and Tenements in that town the youngest son should inherit, and so it was there declared and not the Writ. *Scire*, he declares that hee is the youngest son; and the Writ makes no mention therof, Judgment, *Et non allocatur*, & collaterall warranty was alledged, & also asserts by discent, yet by the Court, he shall not be barred by this warranty which is at the common Law, and discented upon him who shall inherit by the Common Law, &c. by which the Tenant waived his barr and vouched &c.

XXXV. *Whether warranty barr the Heir in Gavelkind.*

**I**N the same manner it is of Tenements in the County of Kent, which are called Gavelkind, which Tenements are partable among brethren, &c. according to the custome. For if any such warranty be made by his Ancestor, such warranty shall discent only to the heir, who is heir at the Common Law, that is to say, to the elder brother according to the course of the Common Law, and not to all the heirs which are heirs of such Tenements according to the custome, *Litt. fol. 167. pla. 45.* (agreeing 22 E. 4. 10) 21 E. 3. 21. *Bro. Warranty* 69. and that the warranty in Gavelkind discent only upon him who is heir at the Common Law, but a release of the Ancestor is a bar against them all, 21 E. 21. *Br. warranty* 44. agreeeth hereto, 44 E. 3. 16. and 17 E. 3. 61. *Fitzh. warranty* 22. and 24. E. 3. 66. *Fitzh. warranty* 50.

XXXVI. *Whether warranty barrs the halfe blood.*

**I**F Tenant in tail hath issue two daughters by diverse venters, and dieth; and the Daughters enter, and a stranger doth disseise them of the same Tenements, and the one of them doth release by his Deed to the Disseisor all his right, and binds him and his heirs to warranty, and dyeth without issue, in this case, the sister which surviveth way well enter and out the Disseisor of all the Tenements, because such warranty is no discontinuance nor collaterall warranty to the sister who survives, because they are of the halfe blood, and the one cannot be heir to the other, according to the course of the Common Law: But otherwise it is where there are Daughters of Tenant in tail by the same venter, *Litt. fol. 167. pla. 46.*

XXXVII. *Whether*

XXXVII. *Whether he that is not heir shall be barred.*

**I**F Tenant in tail to him and his heirs males hath issue two sons, and discontinueth, and the Ancestor collaterall releaseth with warranty and dyeth, the father who is Tenant in tail dyeth, and the elder son hath issue a daughter and dyeth, the younger son shall not have a Formedon, by *Newton* and *Aschough*, but the tail is utterly anciented and extinct, and the elder barred thereof for ever, and by the same reason the younger who claimeth by him, and if the heir bring a Formedon, and the Tenant hath warranty collaterall to plead, and he will not plead it, by which he recovers; yet the warranty is not taken away, but he shall have a Writ of Right, and the grantee of a Rent, shall falsifie this Recovery, *Per Passon*, in an Assise, *H. 19. H. 6. 59.*

In an Assise by two brethren, the Tenant saith that their Father enfeofed him with warranty, and the land was Gavelkind, and demands judgment, if an Assise &c. *Fitzh.* This is no plea, and after the Assise was awarded against the younger, the elder answered to the Deed, *44 E. 3. 17* and by *Pigot*, they all shall vouch by force of warranty made to their father as heirs, and the feoffment of their father is a good bar to them in a Writ of entry, upon disseisin, *22 E. 4. 10.*

But *17 E. 3. 61. Fitzh. warranty 22. and 22 E. 2. 10. Fitzh. warranty 7.* The uncle of the heirs in Gavelkind doth enfeof with warranty and dyeth, and the warranty lyeth against the elder only.

XXXVIII. *Whether warranty shall bar a feme Covert.*

**N**Ote, If the husband discontinue the right of his wife, and the Ancestor collaterall of the Wife, releaseth with warranty and dyeth, to whom the wife is heir, and after the husband dyeth, the wife shall be barred in *Cui in vita*, by this warranty, notwithstanding the Coverture, because she is put to her Action by the discontinuance; for coverture cannot avoid warranty, but where the entry of the wife is lawfull, which is not upon a Discontinuance, *33 H. 8. Brooke warranty 84. and 3 H. 7. 9.*

In an Action of Trespass collaterall, warranty was pleaded against a woman in Remainder in taile who was covert, *Tempore Discensus inde*, and it was held a good bar in the Action, by reason it was made upon discontinuance, for it is a sufficient bar in trespass without the warranty, *Tamen dubitatur*, if such warranty so descended, be a sufficient bar in a Formedon in Remainder brought by the woman, the reason seems to be, for that the warranty cannot properly be avoided but by entry, and she cannot



not enter upon a discontinuance, and then it seems that this is a barr, notwithstanding the Coverture, 35 H.6.63. By *Prisot*, Nonage nor Coverture will not serve to defeat a collaterall warranty, but where his entry is lawfull, and 32 E.3. *Br. warranty* 94.

It is doubted if warranty discend to a Feme Covert, having right of Remainder upon a gift in tail from him who made the warranty with the Remainder to her, whether this shall be a barr in a Formedon in Remainder, 3 H.7.9

Tenant for life, the Remainder to me, and to his Daughter, being my wife in fee, the Tenant for life aliens with warranty and dyeth, this shall bar me and my wife in *Consimili casu*, 18 E.3.3.

### XXXIX. Whether warranty shall bar an Infant.

**BY** *Littleton*, fol. 163. plac. 35. Tenant in Dower alieneth &c. the heir being within age, and also at the time when the warranty discended upon him he was within age, the heir may enter, for no laches shall be judged in the heir within age; but at the time of the discent if he were of full age, and entred not upon the Alienee in the life of the Tenant in dower, there peradventure the heir shall be barred by such warranty, because it shall be accounted his folly, that he being of full age, entred not in the life time of the Tenant in Dower, &c. hereto agreeth *Prisot*, 35 H.6.63. and by his opinion he shall not defeat it by Assise: For if it be pleaded against him and he cannot plead entry to defeat it, he shall be bound. And it is said elsewhere, that upon discent and the like, where the entry is not lawfull, and a collaterall warranty discends, it shall bind for ever, notwithstanding Nonage or Coverture, for Nonage nor Coverture will not serve to defeat a collaterall warranty, but where his entry is lawfull: And by *Schard*, *Stonffe*, and *Birton*, in an Assise, if collaterall warranty descend upon an infant, he may enter in the life of his ancestor, or after well enough, 28 *Ass. p.* 28. & per *Cur.* 18 E.4.13. *Tamen videtur*, that if a discent be mean between the full age and the entry, that then he cannot enter, but by 32 E.3. *Brook warranty* 94. and *Fitzh. warranty* 30. where the entry is taken away, there the warranty is a barr, and so of coverture by *Stone*, 6 E.3.6. *Fitzh Warranty* 60. If you be within age, it is greater reason that your action should stay till you come to your age, which shall not out him of his answer by reason of his Nonage, and after the Plaintiff was non-suit, being in doubt that the suit ought to have stayed untill his age &c. and by 28 *Ass. p.* 28. The alienation by the Tenant by the curtesie with assets and warranty shall not prejudice the Infant within age, but that he may well enter after the death of the Tenant by the curtesie, notwithstanding the Warranty and the assets, vide 35 H.6. and 32 of E.3: in the title *Warranty*, Tenant by the curtesie aliens with warranty and dyeth,

eth, Affets discend to the heir within age who enters upon the feoffee, and adjudged lawfull, because he might have entred for the forfeiture, and then the warranty shall be defeated, and no negligence shall be accounted in him within age, 32 E. 3. *Fitzh. warranty* 30. 28 *Aff.* 28. acc. and the same case.

If an Infant be disseised, and the Ancestor collaterall release with warranty and dye, the infant may enter, but it behooves him to do it presently after he comes to full age, because the Infant had no discretion, *Prisot.* 35 H. 6. 63. but *Danby*, otherwise.

By all it was cleerly adjudged, 18 E. 4. 13. If Donee in taile dye seised, and the mother releaseth with warranty which descends to the issue within age, he may enter within age, or at full age.

**XL: Whether Warranty doth barr a Use in Taile, and the Feoffees.**

**N**Ote, the Grandfather being Tenant in tail discontinues, and thereupon makes the will, that his Feoffees hold his Lands untill his debts be paid, and afterwards to reinfeoff his heirs of his body and dyeth, the Father enters and makes a feoffment, the debts not being paid, and levies a fine and suffers a Recovery by writ of right, and causeth collaterall warranty to be made, and dyeth, and now the son enters, and as some say, the feoffees may enter, and make him an estate, according to the will of the Grandfather, and the opinion of *Hussey* and *Brian* cheif Justice and others was, that the son shall be barred by the collaterall warranty, and the warranty of his Father, and according to the Recovery, the which the son could not undo by the new Statutes, and *Fairfax* and *Townsend* were of opinion, that the heir was barred by the deed, but not the Feoffees, because the Statute doth not bind them, and the feoffees have nothing but only to the use of the heir, by which the heir might enter after the debts be paid, and now the debts are payd, and were not at the time of the feoffment of the father, and the heir might claim by the will of the Grandfather, and not by the Father, by which &c. but the cheif Justices and others were of a contrary opinion, *M.* 3 H. 7. 13.

**XLI. Whether warranty discended upon one in Possession, shall hurt.**

**T**ENANT for life grants over his estate, in whose possession the Ancestor collaterall, releaseth, hee in Reversion releaseth with warranty, this is no barr to him, for hereby his estate is not enlarged, 41 E. 3. *Fitzh.* warranty.



warranty 15. 44 Ed. 3. 10: agree, where the case was thus, Lessee for life, the remainder to another in tail, the remainder to the right heirs of the Tenant for life, who grants his estate as aforesaid, but otherwise it is if he had the fee at the time of the Release made unto him, 44 Affise 28. Action 43 Ed. 3. 9. The opinion of *Finch* was otherwise, as it seemeth, for he said, that if Lessee for life, be with remainder in tail, and the Tenant in Tail releaseth to the Tenant for life with warranty, this shall bar him with affets.

If there be Tenant for life, with remainder in Tail, and the collateral ancestor of him in remainder release with warranty and dieth, this shall not bar me, if the Tenant for life die, for the warranty is gone away, and determined by the possession, *Kirk* 45 Ed. 3. 21. *Perry* acc. 44 Affise 45 Ed. 8. 21. H. 7.

See 43 Affise 6. adjudged. If there be a gift in Tail, the remainder to the King, and he makes an exchange with another, to him, and his heirs for other Lands, and with a clause of warranty and dieth without issue, and affets descend to the King, that this shall be a bar by the warranty, and restitution was there made.

#### **XLI. In what actions warranty shall bar.**

**I**N an action of Trespasse, upon the Statute of 5 R. 2. the Defendant said, that certain persons were seised of the same Lands to the use of the father of the Plaintiff in fee, and the father and his heirs made a Lease to him for years, with warranty, and the Plaintiff in the life time of his father confirmed his estate with warranty, Judgement, whether against this deed with warranty, he can maintain this action. This is no bar in this action, for no Land is to be recovered, nor in demand, but damages, as in the generall Writ of Trespasse, and the nature of Warranty is to stop one by way of conclusion of his Right, and it is not pleadable, but where the Land is in demand, 20 H. 7. 2. 21 H. 7. 32.

In Trespasse upon a *Clansum fregit*, the Defendant may plead a Fine with proclamations in bar, but then it behoves him to conclude Judgement, if action, for he cannot in Trespasse rely upon the estoppel, for this goeth to the realty, otherwise it is in an Affise: So the Defendant may plead a warranty in trespass, and conclude Judgement, if action, but he cannot rely upon the action, 27 H. 8. 2. *Perkins* pa. 726. otherwise, 32 Ed. 4. 5. and 21 Ed. 4. 82. agreeth with the warranty with conclusion.

In a forcible entry the Defendant pleaded a Feoffment of the ancestor of the Plaintiff with warranty, and demands Judgment, if against the deed of his ancestor &c. The better opinion in the book was, that this is no plea, because nothing is demanded but damages; afterwards it is said, that

that it appeared by the Declaration, that the warranty was made a long time before the Trespasse supposed to be done. *Bryan*, then peradventure it may be good, for this warranty proves the possession lawfull at the time of the entry, 11 H.7.15.

In Trespasse upon the Statute of 5 R.2. the warranty of the ancestor was pleaded, Judgment demanded, whether against the deed of the ancestor, which comprehends &c. the better opinion seemed, that it was no plea, till the Freehold came in debate, 11 H.7.12.22.

In Trespasse upon the Statute of 5 R.2. brought by the husband and wife, the Defendant said, that the ancestor of the wife, whose heir she was, did enfeof such an one with warranty, whose estate she hath, demands Judgment whether against this deed, which comprehends warranty, whose heir the wife is &c. the opinion of the Court was, that this is no good plea in this personall action, otherwise it in a Plea of a reall action, 15 Ed.4. *Fitzh. entry 42.*

Tenant in Tail of an Advowson in grosse, gives the same in fee to one in whose possession an ancestor collaterall doth release with warranty, and dieth, Tenant in Tail dieth, the Church happens to be void, and the Grantee presents, and the issue in Tail brings a *Quare impedit*, the Defendant pleads the collaterall warranty of the ancestor, and this was a good bar, because by his count he claimed the inheritance, but if he had claimed the Advowson but for years, or for the next avoidance, then it had been no good bar: So in Trespasse *prima facie*, the warranty is no bar, because the plaintiff is supposed to be in possession, but if he intitle him to the Freehold or to the inheritance, then it is a good bar: so in waft if he declare upon a Lease for life, so in assise if he claim by *Elegit*, or statute Merchant, it is no bar, otherwise it is, if he claim the inheritance or Freehold, and all this was granted by the Court, 15 Hen.7.9.

Trespasse for breaking of his Close, the Defendant pleaded the release of the ancestor of the plaintiff in his possession with warranty, Judgment, whether against this warranty of the ancestor without other matter shewed, *acc. &c.* The opinion of all the Court, except *Catesby*, that the plea was not good, because the action was meere Personall, 12 Ed.4.4.

In Trespasse, the Defendant intitles himself to Lands by act of Parliament, because they were seised into the Kings hands, and by his Letters patents &c. he grants the same Lands to the Predecessor of the defendant, and demands Judgment, if without speciall matter shewed against this act of Parliament, he shall be received to this action, and it was not allowed by such conclusion, for it cannot be pleaded by way of estoppel in this action, because if the defendant would plead in Trespasse the deed of the ancestor of the plaintiff with warranty, whose heir he is of this Land, and demands Judgment, if against the deed, which comprehends warranty &c. This is not of force, because these actions are all said to be in possession *prima facie*, and not in the right, so if he plead a recovery against the ancestor of the plaintiff, whose heir he is of the same Land,



and demands Judgment, if against this recovery &c. This is of no force, because no Land shall be recovered thereby, but in an assise or *Preceptum quod reddat*, they are good pleas pleaded by the manner &c. but the Justices hold these pleas good to plead by the manner against the Plaintiff himself, as warranty made by the plaintiff himself, or recovery against the Plaintiff himself, but not where they are against the ancestor (where note the diversity) and so the Plea was not holden good, but the Justices held, that if they would plead matters before, without such conclusion, and colour given, that this shall be good without doubt, but without colour it would not be good, but in the Cases before, it is a good plea without colour, by cause of estoppel, because where he pleadeth an estoppel, there is no need to give colour, and without pleading an estoppel it behoves him to give colour, 35 H 6 *Fitz. b. Trespasse* 160.

In Trespasse for breaking his Close, the Defendant pleads the warranty of the ancestor of the Plaintiff, whose heir he is by a deed shewed before that made to such Tenant of the place where the Trespasse was done, whose estate he hath, and relyeth upon the warranty, afterwards he waived this plea without compulsion, and pleaded the Feoffment of the ancestor with warranty made to such an one whose estate the Defendant hath, and demands Judgment, if against the deed of his ancestor, which comprehends warranty, without speciall matter shewed, this action he ought to have, and this was held a good plea, 21 E. 4. 18. 82.

In an Assise of Common, the release of the ancestor of the Plaintiff is no plea with warranty, because that it is of another thing, and also because that the heir cannot defeat the warranty by entry into the Land, because his entry into the Land is not lawfull, so to bar him by the deed his ancestor, where no Laches shall be adjudged in him, it should be hard, 22 Aff. 38. 34 Ed. 3.

In an Assise of common of pasture, the release of the ancestor of the plaintiff with warranty, is no bar, because the warranty doth not extend to common, if he were sued by a stranger of the Common, he shall not vouch by reason of this warranty, nor by consequence shall bar him, but the release of the plaintiff, without warranty is good, but if it be with warranty, and he rely upon the warranty, it is not a bar, 33 Ed. 3 *Fitz. V Warranty* 74.

In a *Juris utrum*, or Entry *sine assensu Capituli*, by a Dean, Warranty of the ancestor is no bar, 27 H 6. *Fitz. warranty* 48.

If a Parson of a Church be disseised of Land in right of his Church, the Release of his brother with warranty shall be a bar to him for his life &c. In an assise &c. 24 Ed. 3. *Fitz. warranty* 71.

In a writ of Dower, the warranty of the ancestor of the Demandant is no bar, *Quare causam*, 43 Ed. 3. *Fitz. warranty* 72.

Release of the ancestor of the plaintiff is no bar in Dower, nor in a *Quod permittat*, by Sulyard 21 Ed. 4. 82.

*Coll.* and *Vavasour* agree, but *Ryan* said, if he claim the Common by the same ancestor, it is a good bar, *ibidem*.

If a man have a Rent-charge, or a Rent-seek issuing out of the Land, which is holden of his father, by certain Rent, yet if the father release to the Tenant with warranty, this is no bar to the heir, of his Rent-charge, or Rent-seek, as I understand the book, 41 Aff. 6.

In an assise against a man and his Wife, and another, the third said, that he was enfeoffed by the husband and his wife, and voucheth them who were in Court, and would have warranted and pleaded in bar, and were not received, because in an Assise of Novell disseisin, a man shall not warrant, unlesse he will willingly warrant it, and it should be altogether against the will of the husband, otherwise it is in other pleas where he shall be compelled to warranty by processe &c. 20 Ed. 2. Fitzh. Warranty 84.

## Things to be warranted.

XI L I V. Where warranty shall follow the estate, and enlarge it, or continue after the estate determined.

A Man doth enfeoff one R. to him, and to his heirs, and assigns, and by the same Deed doth bind him to warranty by such words, *Et ego vero predict. &c. omnia, terras & tenementa contra omnes Gentes in forma prad. warrantizabimus &c. Hanck.* This warranty extends to the assigns of the Feoffee as well as to the Donor, and the last term a fine was pleaded here in the same manner with warranty, *scil. in forma predicta*, and this was the ancient form, and I know this case was put, and adjudged in my book, that the warranty was good by the manner, which was affirmed by all the Judges, 14 H. 4. 13. whereto agreeth Perkins 49. c. 12 Ed. 2. and 6 Ed. 2. Br. warranty 82 & 66.

In an assise it is admitted, where a man releaseth to Tenant for life, the remainder over in tail, the remainder to the right heirs of the Tenant for life, and the release is with warranty to him and his heirs, and the Tenant for life grants his estate over and dieth, and he in remainder in Tail enters, that this warranty is determined, and void, for the release shall enure to all the estates, and the warranty cannot enure but to him to whom it was made, and cannot enlarge his estate, 44 Ed. 3. 10.

In a formedon in remainder, *Sad.* there where he demands 20 acres, and two Mills, we say, that F. his Uncle enfeoffed us by this deed which is here, and bound him and his heirs to warranty, and we say, that at the time of this feoffment, the place where the Mill was afterwards set, was then Land, and passed as parcell, and the deed was read, which was, 20 acres of Land, and one Mill, *Et ego volo &c. warrant. &c. omnes prad. terras, cum pratis, pasturis, homagiis, & servitiis liberum tenementum, cum omnibus*

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*nibus suis pertinentiis*, *Parn.* as to the Mill, he had not warranty, which did extend it self &c. by reason whereof we pray seisin thereof, for in that he granted so much, and one Mill, he supposeth that the Mill is in grosse by it self, and then it cannot be comprised within these words, *omnes terras*. *Herle*, the deed willeth *omnes terras cum pratis, pasturis, & cum pertinentiis &c.* *warr. & Parn.* A Mill cannot be appurtenant to Land, nor parcell, nor more, for it doth suppose a thing in grosse. *Herle*, it seems to us, that it takes to the whole Deed notwithstanding this grant &c. 7 *Ed.* 3. 50. *Fitz. Warranty* 45.

An Annuity was granted to one and his heirs, and warranted for him and his heirs, to the Grantee and his heirs, and the opinion of the Court was, that the annuity is taken away by the death of the Grantor, because, that it was not granted for him and his heirs, and the warranty is of force when the estate is determined, 2 *H.* 4. 13.

Where Lands were given to two and their heirs, leaving out *suis*, with warranty to them and their heirs, that they have but estate for life, and the warranty doth not amend the estate, for it doth not alter, but ensue it, and is determined with it, and is as it were a Covenant, for if a Lease be made for life with warranty in fee, this shall not enure but for life, by *Fortescue* 19 *H.* 6. 74. 20 *H.* 6. 35. and 22 *Hen.* 6. 15. adjudged. So if a Feoffment be made in fee with warranty in tail, this alters not the estate, but he hath the Fee, 10. and 11. *Eliz.* *Catlyn* agrees of a Lease for life.

Lease, *pur auter vie*, with warranty in fee, it enlargeth not the estate in *seffa ad molendinum*, 17 *Ed.* 3. 67.

If gift in tail be made with warranty in fee, *viz* to him, his heirs, and assignes, and he makes a feoffment, and dies without issue, the donor shall be barred by this warranty, 7 *Ed.* 3. 34. and 46 *Ed.* 3. 4. agrees, for the warranty extends to the assignes.

*Quare*, Where Lands were given to husband and wife, and warranty to them in Tail, if it were tail, or not, 12 *Aff.* 16. but 12 *Ed.* 3. *Fitzb. Tail* 3. that it is Tail, *Perkins* 38. contrary, but for life &c. for by warranty in the deed, the estate shall not be altered.

If Lessor for life release to the Lessee all his Right with warranty, to him, his heirs and assignes, yet his estate is not altered, for the heir can not have warranty, if he hath not estate, 7 *Ed.* 3. 6. & 7. in the same opinion.

#### *X L V. Whether warranty extend to another estate.*

**S**Cire facias out of a Fine against a Tenant, the husband and the wife were received for default of the Tenant, and shew unto the Court, that the husband and wife did lease to the Tenant the Tenements for term of life,

life, saving the Reversion to them and the heirs of the wife, and shewed a deed of the ancestors of the Demandant with warranty, to the same wife, to her, and her heirs of her body, saving the reversion &c. and demands if against &c. *Belknap*, by the deed shewed, the wife had but a fee tail, and she had reserved a Reversion in fee, of which she is now received, whereby Judgment, if to this warranty which extends to another estate, the Law will put us to answer.

*Finch*. If she were to dereign the warranty, she shall not be warranted of another estate, but she may counterplead the warranty, but in this case of rebutter, not; *M. 45 Ed. 3. 18.*

Note, that *Hill* said, if Tenant in Dower alien in fee with warranty, and a Writ be brought in the life of the Tenant in Dower, and before the time of the Plea, the woman dies, by her death, and by her warranty the heir shall be rebutted. *Scrope* Justice, the Law is otherwise, for if he could say, that if he took his fresh suit upon the alienation, living the Tenant in Dower, he shall not be rebutted by the warranty of the Tenant in Dower, after her death, *3 Ed. 3. 11. Nor. Fitz. warranty 62.*

In a Formedon in descender by *W.* against *C.* of a gift made by *B.* and *C.* his wife, *Belk*, one *R.* great Grandfather of *W.* now demandant, gave the Lands to *B.* and *C.* his wife, to them and their heirs in fee, and bound him and his heirs to warranty, and *C.* died, and *B.* the husband survived, whose estate the Tenant hath, Judgment, if against the deed of his ancestor &c. *Cheld*. this *R.* is the same person, which we have supposed, who gave in fee tail to the said *B.* and *C.* and so his plea is contrary to our Writ, for which we will aver our writ. *Belk*, I rely wholly upon the warranty. *Cheld*. shew then how you have his estate. *Thorp*. The most stranger in the world shall be well received to bar you by the warranty, without shewing how he hath his estate, but in case of voucher he shall not be received, and therefore answer. *Cheld*. It is not the Deed of *R.* our Ancestor, issue taken; and others were of a contrary opinion, *T. 43. E. 3. 19.*

**XLVI.** *Whether Warranty shall bind the right which comes of a younger time.*

**VV**arranty goes to no more but to that which is of the part of the party, for if husband and wife levy a Fine with warranty of land of the husband, yet she shall have her Dower, *25 Ed. 3. Fitzb. Dower, 132.* and *13 Edw. 2. Fitzherbert Dower 160. 19 Ed. 2. Fitzherbert. Dower 165.* agreeth.

Assignment of Dower with warranty without impeachment of waste is no bar in a Writ of waste, *16 H. 7. 4.*

Release to Tenant for life with warranty is no barr of Condition broken



ken after, so of waft or forfeiture committed afterwards, so of the heir to the disseisor of his father, in the life of his father, without warranty, 42. Ed. 3. 6. cap. as it seems of waft, *tamen quare*.

If the husbaud discontinue, and the issue confirm with warranty during the life of his mother, who after dieth, he shall be barred by this warranty *sur cui in vita*, but if there were not warranty in the deed, *non valeret* 10 Ed. 2. Fitz. Warranty 82. and Fitz. Confirmation 24. agree, if he confirm the estate of the disseisor of his father, he shall not be barred without warranty.

By release of the father to the disseisor of his Grandfather with warranty, which descends to the Son, shall bar him of entry, and action for the Land in Fee, notwithstanding the right descended unto him after the warranty, if the father died first, and the Grandfather after: So by release of the elder son in the life of his father, Littleton fol. 159. plac. 11. & 12.

#### XLVII. Whether warranty can be divided

**I**N a *Præcipe quod reddat*, Tenant in speciall Tail hath issue a daughter by his wife, and discontinues with warranty, the wife dies, he takes another wife, and hath issue another daughter, and dies. The elder daughter takes a husband, and she and her husband bring a Formedon, and the Tenant voucheth the daughter wife of the Demandant, and the other sister by a strange name, the wife demandant appears, the other makes default to the *sequatur*, whereby the Tenant rebutted against the Demandant by the warranty, and assets descends for one moiety, and for the other moiety the Demandant had seisin of the Land (which note) for he cannot rebut for the whole, because the warranty descends onely upon the wife of the demandant, and so see a warranty severed, 45 Ed. 3. 23.

Note, where there be two parceners, and the one alieneth her part, and the other is sued, there because she cannot have aid of her coparcener, she may vouch alone, and shall have the warranty alone, by Finch and Kni-  
*vet, & non negatur* in formedon, and so observe the warranty severed, and she shall have it onely for her moiety, 38 Ed. 3. 20. Brook. warranty 27.

In a formedon, the Tenant pleads joint-tenancy with 7. N. the Demandant said, that 7. N. is his villain, and the opinion of the Court was, the joint-tenancy shall stand, for otherwise the Tenant shall lose his warranty, for both shall joyn in voucher, so long as the joint-tenancy continueth, but if it be severed by lawfull entry, as where the Lord entreteth into the moiety of his villain, there the other in *Præcipe quod reddat* against him, he may vouch alone, for the jointure is severed, the same Law is where his moiety is recovered against him. *Quod Nota*, and so you see the

the warranty divided in some case, 48 *Ed. 3.* 16. and 48 *Ed. 3.* 12. Warranty of an infant is void, and yet if an infant and a man of full age make warranty, both shall be vouched, and upon the age found it seems that the other shall warrant the whole.

Note, where a man and his wife do render Tenements by fine to one *B.* the husband and his heirs shall warrant onely, and not the wife nor her heirs, 10 *Ed. 3.* 27. *Fitzh. Warranty* 54.

Note, that where two make a Feoffment by deed, by the words *Dedi et concessi*, and the one dieth, the other shall warrant the whole, and if an infant and a man of full age make a feoffment with warranty, he of full age shall warrant the whole, which see more fully, *Bro. recovery in value*, 39. 39 *Ed. 3.* 26. and *Bro. war.* 98.

If a man enfeoff *A.* and *B.* with warranty, who enfeoff *W. N.* who is sued, and voucheth the two, who vouch the first Feoffor, and after one of the two makes default, and the other appears, he shall have the warranty against the first Feoffor, and so is the better opinion, 11 *Ed. 4.* 8. and by *Luddington*, if two joint-tenants, be sued, the one appears, and the other will render or make default, he which appears shall have the whole warranty. but by *Ascue*, if there be two joint-tenants, and the one enfeoff a stranger of his part, the warranty is taken away, which *Luddington* denied not, *Concord* 11. *Ed. 4.* 8. 5 *Hen. 5.* 7.

So it is where two warrant, and the one had nothing, and maketh default when he is vouched, the other shall warrant the whole, see 39 *Ed. 3.* 26. 41 *Ed. 3.* 30.

Father and son purchase jointly, the father aliens the whole with warranty and dies, this is no bar to the Son, but for the moiety, by *Lit. fol.* 157. *pl. 5.* agreeth 22 *H. 6.* 51. because it did commence by disseisin, as to the moiety, otherwise by *Herle*, 13 *Ed. 3.* *Fitzh. warranty* 25.

In an Assise of Novel disseisin, where the deed of the ancestor was pleaded in Bar, and it was alledged that he had nothing, but jointly with the Plaintiff, for term of their lives &c. this was in an assise before *Hill*, and by Judgment it was a bar as to the one moiety, and he recovered the other, 19 *Ed. 3.* *Fitzh. warranty* 38.

If white acre and black acre be given to *J. S.* and *J. K.* and their heirs, to have and to hold white acre to them and to their heirs, this *habendum* is void, but if this acre be warranted to them, this warranty is good, notwithstanding, that it extends to the whole Land which was given, *Perkins fol.* 36. *G. 7. pl. 176.*

The Father and the Son joint-tenants in fee, the Father makes a Feoffment of the Land with warranty, and by the Livery outs the Son, and dieth, in an assise brought by the Son of the Land, the warranty was pleaded in bar of the Land, and adjudged upon the shewing of the joint purchase, that he shall recover the moiety, and for the other it shall be a bar, 13 *Ed. 3.* *Fitzh. warranty* 24. *Lit. fol.* 157. *pl. 5.* agreeth, an 13. *Assise* 6. accord. vvhether there were four Joint-tenants, and the one being.



ing Father to one of the others, made a Feoffment with Warranty of the Land and died; and the two others dyed, the Son who was the fourth, recovered three Parts; and 19. *E. warrantie* 38. agrees with the former case.

The Father and the Son seised to them, and the Heirs of the Son, the Father makes a Feoffment of the Land to the Tenant in the Affize, with Warranty in Fee, and dyeth, and it was adjudged that the Son should recover the Land by *W. Herle* as its said, *quare veritatem* 13. *Ed. 3. Br. Warranty* 25. 13. *Affize* 7. adjudged accordingly, where two Joynt-Tenants and to the Heirs of one: But the Reporter saith, *Quere*, if the Tenant for terme of life were Ancestor to the other, I doe beleive, that then, he shall be barred of the moyety.

If Land be given to the Father and the Son, and to the Heirs of the body of the Father, and the Father alien the whole with Warranty and dieth, as to the moyety the Son may enter, for it commenced by disseisin, and as to the other moyety he shall have his action; yet it is to be considered, whether he can enter into any parcell, for then the Warranty as to that part is defeated, and one and the same Warranty by one and the same Deed, cannot stand in part, and in part be defeated, by *Newton and Paston*, but see *Fitzh. warranty* 4. their opinions to the contrary abridged of the doubt of *Ashton* 22. *Hen. 6. 31.* by all.

If there be two Joynt-Tenants, and the one makes a Feoffment of his parte, the other shall have the Warranty of the moyety because there was no default in him 29. *Ed. 3. Fitzh. warranty* 70.

Two Joynt-Tenants or Parceners make partition, they shall have aid one of the other to have the Warranty Paramount, the Reporter saith, *quare* of the Joynt-Tenants, if they shall have the aid 2. *HL. 6. 7. Kars.*

If a Villain and a stranger purchase Joyntly, and the Lord of the Villain entereth into the moyety, the other shall have the Warranty of the moyety. So, if the Estate of the Villaine be defeated by Entry, or Recovery 48. *Ed. 3. 17.*

If there be two Coparceners, and the one alieneth his part, the other shall have the Warranty for the moyety 38. *Ed. 3. 20.*

If two be vouched and one makes default: Judgment is given for this moyety, the other enters in the Warranty for the other moyety. But if the Voucher releaseth the Warranty to the one, the Warranty shall not be divided but extinct in the whole. By *Finchden. Skipwith* contrarie, *quare hoc* 48. *Ed. 3. 5: Finch.* Agreeeth of the default 49. *Ed. 3. 23.*

If I vouch two, and shew their Deed to bind them, and the one acknowledgeth it, and the other denies it, upon which I come to issue, and it is found against me, I shall recover against the other, but the moyety; but if I had demurred upon him upon his acknowledgment, and not answered the other, I should have recovered the whole Warranty against him, by *Stone*. So where I vouch two, and the one saith, he is within age, and I say he is of full age, and is found against me, I shall recover against

against the other, &c. but the Moyety, notwithstanding his acknowledgment of the Deed, and I shall be barred against the infant for ever, 18 E.3 23. warranty 75.

Two parceners make partition, the one being sued prays in ayd of the other, who is returned summoned and severed, now the other shall have the warranty paramount, 45 E.3. 23. Finch.

Four parceners were vouched, three made default after default, whereby seisin was awarded for three parts, and as to the fourth, the other answered, 19 E.2. Fitzh. Ayd 172.

If two have warranty of me, and the one releaseth to me, this shall not bar the other, otherwise of an Obligation; 19 Edw. 3. Release in Statb.

If the eldest son enter into the whole, and makes a feoffment with warranty, and dyes without issue, the younger son is barred for one Moyety, that is to say, for his own moyety, and he may have his Formedon of the other moyety, Lit. fol. 160. pla 16.

XLVIII. Whether a thing which come in lieu of another thing, shall be of the same condition.

**I**F I recover land in value, and after I am sued for the same land, I shall not vouch by reason of the first warranty, because it was once executed, because it came in lieu, but where I am enfeoffed of a Rent with warranty, and after the Land comes in lieu of the Rent, I shall not have the Warranty of the Land, because a Covenant is taken strictly, by Wilby.

Some say, That if land come in lieu of Rent by Escheat, that hee shall the warranty of the land, 45 E.3. Fitzh. voucher 72.

In a Formedon against an Infant, where his Ancestor was seised of a Mannor, of which this land in demand was holden, and dyed, and afterward the Tenant was attaint of felony, and he entred and prayed his age, and had it, because the land came to him in lieu of the Seigniorie, which Seigniorie to him descends to vouch, now by the Warranty made of the Seigniorie, 6 H.4 1. 16 E.3. age 46.

If Rent be held by some service, and the land be come in lieu of the Rent, in the same plight as the Rent was, the land shall be, 1 Hen. 4. 4. Hank.

If a Seigniorie in gross be granted to an use, and the land escheat, the feoffee shall be seised to the first use, so if the feoffee recover land in value, upon a voucher, 14 H.8. 7. 9. Fitzh. and Pole.

If a Mannor and the services of the Tenant were granted by fine, if the land comes into the hands of the Tenant by escheat, the Conusee shall have a Scire facias, of the land, because it came in lieu, &c.



So in a Formedon by Tenant in taile, of land escheated, the warranty is taken away, 18 E. 3.

So if a Seigniorie be allotted to one Coparcener, and after the land escheat, whereof she is sued, she shall have ayd, *pro rata*, of her companion 16 E. 3. *Fitzh. age 46.* and 10 E. 3. 58.

An Abbot recovers in value by reason of the warranty of the Ancestor, this is no Mortmain, for it is no new purchase, 45 E. 3. 58.

Lessee for life rendring rent recovers in value against his Lessor, hee shall not pay any Rent, for this shall be recouped upon the extent, 22 *assise* 52.

So if he hath a Lease for life without impeachment of waft, and recovereth in value, he shall now hold this as subject to waft, so if land discend to one who recovers in value other land, to which another man hath title to enter, yet his entry shall be lawfull, 34 *Ass.*

So of land recovered in value, if he be sued, he shall not have voucher againe, unlesse it be a warranty in Law, as upon exchange, 34 *Assise* 15.

Right of Disclaimer, where it escheateth after the Seigniorie doth discend, the plea shall not stay for the land, for that did never discend, but otherwise if he had demanded the services, *Vide 4 M. fol. 137. f. In Cessavit.*

#### XLIX. Whether warranty being reall may be good of a thing in the personalty.

**T**enant in taile of an Advowson in gros, grants it to *W. N.* in fee, and the Ancestor collaterall to the Tenant in taile doth release with warranty, and dyeth without issue. The Tenant in taile dies; the Church voides, *W. N.* presents, and the Issue in taile brings a *quare impedit*, and the other pleads the release with Warranty, and it was adjudged a good Bar, because that he claimes the inheritance, otherwise if he had claimed but for Terme of years. But it is a good Bar in Wafte, where the Plaintiff declares for terme of life, but it is no bar against him that claimes by *Elegit* or by Statute Merchant, but if he claime the freehold it is a good Bar, *quod nota*, 15 H. 7. 9. and by *Hank Warranty* is no Plea in Trespasse, for it is a Covenant reall, and Trespasse is in the Personaltie 14. H. 4. fo. 36.

A man doth make a Lease for years and Covenanteth to warrant the Land &c. The Lessee is outed by wrong, he shall not have Covenant, otherwise it were, if it were upon an elder title: And no man shall have advantage of Warranty reall, if he be not Ter-Tenant, as by Voucher or *Warrantia Charta*, otherwise it is, of a personall Warranty (as above) for if he be outed, &c. he may have the benefit of the Covenant, &c. 26. H. 8. 3.

H. 8. 3. and 22 H. 6; 52: agreeth, For if Lessee for years be outed by him that hath no right, he may have his Action of Trespasse, or *Ejectione firme*: Otherwise it seemeth of a Warranty of Freehold, and he is sued by him that hath no right, yet hee may vouch by this Warranty.

In a *quare Impedit* it was sayd by the Justices, That in Trespasse done in Land, Collaterall Warranty is no plea, because the Plaintiff is supposed to be in possession, but if hee intitile himselfe afterwards to the Freehold, then it is a good barr: *quare inde*, for it appears often times that it is a good Estoppell in Trespasse, after that the Freehold comes in Debate; but no barr, for the Warranty is Reall, and the Action is personall. 15 Hen. 7: 9: 21 Hen. 7: 32: That Warranty upon a Lease for yeares is no plea in Trespasse, by two Justices, the third being of a contrary Opinion, *Ideo quare*, and that he may have this action of covenant thereupon.

In Trespasse upon the Statute of 5 Rich: 2: The Defendant pleads a Lease for yeares of the Ancestor of the Plaintiff, and Confirmation made by the Plaintiff to the Lessee with Warranty, and Judgement demanded, if against this Deed which doth comprehend the Warranty, &c:

*Brooke*, The Warranty is no plea, for it is but of a Chattell reall, upon which no Action lyeth, in which a man may vouch or rebut.

*Newport and Elliot*, A Grant of a VVard is good with Warranty, and in a VVrit of VVard, the Grantee may vouch or rebut. And *Fairesfax* agreeth with *Brooke*, And that it is not but as the VVarranty of a horse.

*Justice Read*, In an Assise by Tenant by Statute Merchant, Collaterall VVarranty by the Ancestor of the Plaintiff, is no barr, for it is but a Chattell reall, although the VVrit be, *Ut de libero Tenemento*, 30 H: 7: 4:

If a man make a Lease without VVarranty, and a stranger entreth by title, the Lessee shall not have action of Covenant against the Lessor himselfe, for he hath not broken the Covenant, and also there is no VVarranty, yet by *Needham*, hee shall have Action of Covenant, because the Lessee hath no remedy, *quare* 32 H. 6. 32.

If a woman purchase a Ward, and take a Husband and dyeth, the Husband is sued of the Ward, he shall have the VVarranty of the Feoffor of the wife, because it is a Chattell lawfully vested in him, and although he be a stranger thereunto, and the same Law is, where it is sued in the life time of the wife, 29 E. 3. 48. *Fitzh. War.* 74.

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L. How



## L. How a Chattell shall be warranted.

**N**Ote, by *Hussey* and the whole Court, if I bargain with *J. B.* for a thing for 20 s. and warrant it, and I deliver to him the thing sold, if he be deceived he may have an action of deceit, notwithstanding he hath not paid me the money, because I may have an action of Debt at my pleasure, 9 H.7.21. *Concord* 5 H.7.18. for here the warranty goes with the buying, but contrary, if I sell at one time, and afterwards I warrant it at another time, the warranty is void, as of a horse, grain, & *similibus*, *ut dicitur*, and with this difference agrees 5 H.7. 43. and *Dyer* fol. 76. pl. 28. in the case between *Andrew* and *Bowhey* in the Kings Bench.

Deceit in selling false stuffe, knowing the same to be false, and the warranty to be good, and by the Court there is no need of warranty, vhen the vendor knoweth it to be false, or corrupt, and otherwise it is, where I know not this, and upon the knowledge, an action of the case lieth, without any warranty, *Quod nota*, 9 H.6.53.

Deceit upon warranty of cloaths, upon sale of them to be in length thirty yards, where they were but of twenty two yards, the Defendant saith, that the property was in *J. N.* and he, as his servant, and by his commandement sold them, without that he sold them *modo & forma*, and by *Littleton*, although it were the sale of the master, by which the master might have an action of Debt, yet this is the warranty of the servant, who is the Defendant, and an action lieth against him, for it may be that the plaintiff would not have bought them, but upon trust of the warranty of the defendant, yet by *Choke* and *Bryan*, deceit lieth not, where it is sold of one by the warranty of another. *Quare*, for it seems that an action upon the case, upon an *Assumpsit* for such a summe will lie. *Bryan*, if a man sell to me seeds, and warrant me that it is good, where it is, naught, or that they are seeds of such a Countrey, which is false, deceit lieth, for I could not know them, but by him, if he warrant that the seeds shall grow, this is a void warranty, for that is in God.

And if a man sell me a horse with one eye, and doth warrant me that he hath two, this warranty is void, for that the vendee might see whether it were so or not. *Choke*, warranty that a horse shall carry a man 30 miles a day is void, for he cannot warrant a thing to come. *Fairfax*, a man sells cloath *Murrey* colour, and doth warrant, that it is blue, this warranty is void, because it appears to the view. *Bryan*, if the vendee be *captus oculis*, deceit lieth there. *Fairfax* granted the first Case, that if it faileth in length, deceit lieth, for this doth not appear by the view, but by measuring, 11 Ed. 4.6.

In an *Assumpsit*, *Bowhey* the defendant such a day, year and place did assume upon himself for 20 Marks, whereof the moietie was paid in hand, and the residue at certain times between them agreed to be paid, that he would

would deliver at such a place within four days after such a feast four hundred pounds of good and merchantable waxe, the Defendant to defraud Andrew the plaintiff, such a day which was before the Feast, delivered to the Plaintiff at the sayd place 373 pounds of Wax mixt with Rosin and Turpentine; affirming and warranting the sayd 373 pounds to be good; able and merchantizable, where it was not so, and because the Warranty was not upon the contract immediatly, but a moneth after, this was not good, and the deceit there was not responsible nor materiall, *Dyer fol. 76. plac. 28.*

L I. *If Warranty being altered, the estate shall continue.*

**L**ittleton fol. 159. pla 14. Warranty upon release of the middle Son, descended to the eldest is collaterall, and bars him, to avoid the discontinuance of the Father, but if the eldest son dyeth without issue, the youngest shall have a Formedon, for it is lineall to him, P.6. Eliz. It is granted, if the eldest son were once barred in a Formedon, by collaterall warranty; 19 H.6.62. *Ascne* agreed, and the opinion there is, that if collaterall warranty descend to the elder heir male by such tail, who had issue a woman child, and dyeth, the younger shall be barred thereby, so shall his issue, being in by descent.

LII. *Who shall take Advantage of warranty.*

**N**O man shall take advantage of a Warranty reall, if he be not Tenant as by voucher or *Warrantia Charta*, otherwise it is of Warranty personal, for if he be outed &c. he may have an action of Covenant 26 H.8.3. and 22 H.6.52.

If three be enfeoffed joyntly with warranty, and two do release or surrender to the third, he may dereign the first warranty by voucher, or Writ of *Warrantia Charta*, because he is in by the first feoffor, and not by him who releaseth or surrendreth. *Quere* if the surrender be good, but it seems if one release to one, there the one is in by the other, and hee shall not dereign the first warranty, as the case is in the 33 of H. 8. and where all dye but one; he which is in by survivor, may deraigne the first warranty, 40 E.3.41.

By *Caudib*, In a Formedon, if Tenant in tail with warranty enfeoffeth his son within age, and dyeth, he may dereign the warranty as heir to his Father, because he is remitted; but if he were enfeoffed at full age he shall not dereigne as heir, but as Assign. Note the diversity, 40 Edw. 3.



## Warranty.

One Coparcener being vouched, prays in aid of the other who was within age, and that the plea may stay, the demandant saith, that the partition is destroyed by the feoffment of the Grandfather to the father of the Vouchee, and yet by the Court hee shall have Ayde, 43 Edw. 3. 23.

*Fulthorp*, A man may have *Warrantia charta* because hee fears to be sued, and recover *Pro loco & tempore*, but no execution shall be awarded, but if after he be outed, he shall have his warranty upon the first Recovery.

*Portington*, In a *Precipe quod Reddat* the Tenant voucheth, the Demandant recovers, and the Tenant over in value, there the Tenant shall never have execution, if the Demandant take not execution against the Tenant, for he is not to lose, and the same Law is of a Recovery in a *Warrantia Charta*, and by *Paston* and others, a lawfull entry or Recovery made or had by a stranger by an elder title, before that which the Tenant hath vouched in a *Precipe quod reddat*, or before request of Warranty made in assise, shall defeat the warranty, contrary after voucher or request made. Otherwise of a release made by him who hath entred lawfully for that doth not determine the warranty, for the possession continues as to that respect, 21 H. 6. 15. 23 H. 6. 22.

A man shall not take advantage of a warranty which is descended upon anothers possession in which it was not made, as the Lord by *Escheat*, he shall not take advantage of the Warranty made to the Tenant, 29 af. 34. and in an Assise by *A. B.* the Tenant sayd, that the mother of the Plaintiff Tenant in Dower did lease the land to her villain with warranty, whose heir the plaintiff is, and demands judgment &c. and because that he shewed not that the Tenant in Dower died during the seisin of the villain; so that the collateral warranty might descend upon the possession of the villain, so that the right was extinct in his possession: Therefore the Assise was awarded, and *Sic vide*, that the warranty which descended in another possession who is in, in the post. as here, from the Lord of the villain, doth not bind, and so by the Court, if he had shewed that the warranty had bound, and the Plaintiff barred against the villain, he had now been barred, and *Sic vide*, that the Lord may rebut by warranty descended in the possession of his villain, 22 Aff p. 27.

By *Schard*, If land be warranted to a man, it is certain that his heir shall not have the warranty unless that he be named, no more the heir of the assign. *Stone* contrary, for that right which is in the Father, descends to the son, whereupon *Schard* sayd, we had not the land by descent, 19 E. 2. *Fitzb. warranty* 85.

He in Remainder being received upon default of the Tenant in tail after possibility, &c. pleaded warranty and admitted, but for other cause, it was holden no bar, 45 E. 3. 18. according, 38 Ed. 3. 32.

Tenant in tail makes a feoffment to the Father and the Mother, and to the heirs of the Father with warranty, the Father dyes, their heir hath the possession

possession of the Land, and rebuts, but voucheth not during the life of the mother, 11 E. 3. age 6. *Per Stonff*, but if he had come to the possession by the surrender of the mother, it seems clearly that he shall vouch.

If I enfeoff one, and warrant the land against all men, and do not say that it shall be to the feoffee and his heirs, yet this ensues the words of the feoffment, 22 E. 4. 55: *Kebble and Jenney Justices*, and 12 Ed. 2. *Statb.* Warranty agrees adjudged a good barr, *Fitzb. voucher* 262. agreeth, and by this warranty he and his heirs shall be bound to warranty, as if they were named.

A feoffment is made to two, and warrants *In forma pradiſta*, it shall be tended to them, their heirs and assigns by all the Justices. And *Hancke* sayd, he could shew this adjudged, and that upon Livery made in the time of E. 2. that the warrant is good by the manner, 14 H. 4. 13. *Perkins* 54 accords, that he shall be bound and his heirs &c.

Feoffment with warranty to the feoffee, & *heredibus pradiſtis*, this shall be to the heirs of the feoffee, *Perkins* 41.

If Tenant in tail hath warranty, and is disseised, and one who hath an elder title recover by Assise against the disseisor, the Tenant in tail hath no remedy for the warranty against the Donor, 4 H. 7. 2. *Jay*.

It seems by *Skreen*, 3 H. 4. 1. That without re-entry this Tenant shall not have advantage of the warranty to his Ancestors Estate 46 E. 3. 18. this is to rebut, not to vouch.

It seems by the book, 29 *Aff.* 34. The Lord by Escheat shall take advantage of the warranty of him that is dead, *Quare*. But it seems otherwise there if he which made the warranty survive him who dyed, &c. then it is no bar, 18 Ed. 3. 29. That in the first case he is not barred.

The Assign rebuts by warranty, although he be not named, for it runs with the inheritance, not so of voucher, by *Hill*, 14 H. 4. 5. 21 H. 7. 9. *Poll* agreeth to the Diversity, 19 E. 3. 29. *Th.* agreeth to the diversity; that he shall rebut, but not vouch, without the word *Assigne*.

If Feoffee with warranty releaseth to me his Disseisor, I shall be his Assignee to rebut, 26 *Aff.* 39 *Thorpe*, for the second or third assignee, hath pleaded warranty, if he be Tenant in assise; and so was the opinion clearly.

A woman doth purchase a ward, and takes a husband and dyes, the husband shall have the warranty of the Feoffor of the wife, because it is a chattell lawfully vested in him, yet he is a stranger thereto, so it is if he be sued in the life time of the wife, 30 E. 3. 6. and 14. adjudged 29 Ed. 3. *Statb.* warranty, the husband pleads this, *vide* 29 E. 3. 48.

Feoffee with warranty makes a feoffment with warranty, and takes back the Estate to him and to his wife in fee, and because the husband and wife being sued they may vouch the husband, and by such a way to come to warrant, for he is privy thereto, the opinion there was, that they should rebut, 26 E. 3. 56. 25 E. 3. 50. accordeth.

The Assign of an heir rebuts by a warranty to the feoffee, his heirs and Assigns,



Assigns, 14 *Edw. 3. Fitzh. warranty* 23. 7 *E. 3. 34.* accor. and adjudged.

The Assignee of an Assignee rebuts by warranty to the feoffee and his assigns, 38 *E. 3. 21.*

The Assignee of an Assignee relyeth upon the warranty of the Ancestor of the plaintiff in an Assise in barr, and *Schard* notwithstanding did award the Assise, 24 *E. 3. 32.*

One did plead a feoffment made by the Ancestor of the Demandant, with warranty to *J. S.* whose estate he hath, to him and his heirs, and bound him and his heirs to warrant, and if you be sued of another, &c. judgment, if you can demand any thing, and because he hath sayd that he will warrant you against another, and for that cause ought to be a barr, he ought to shew how he was Assignee, he shewed how he was heir of the Feoffee, &c. 8 *E. 3. 10.*

If warranty be made to a man, his heirs and Assignes, the heir of the assignee shall rebut thereby: And *Hill* sayd that he shall vouch, 19 *Ed 3. Fitzh. war.* 58 agrees 13 *E. 1. 93; war. acc.* of the voucher adjudged, *vide* 10 *E. 3. 9.*

Collaterall warranty or lineall being made to one who hath the possession is good, & shal bar during the possession, but if the discontinuee enter upon that possession (*scil.*) because that he disseised him, or that he had broke the condition &c. the warranty is taken away, *Litt. fol. 168; plav* 50. yet the release enures to them.

### LIII. How Warranty shall be pleaded.

**I**N an Assise by *A. B.* The Tenant sayd, that the Mother of the plaintiff Tenant in Dower, leased the land to her Villain with warranty, whose heir the plaintiff is, and demands judgment &c: and because that the Tenant in dower dyed during the seisin of the villain, so that the collaterall warranty might descend upon the possession of the villain, so that the right was extinct in his possession: Therefore the Assise was awarded, and *sic per Curiam*, if he had shewed that the warranty had bound, and the plaintiff barred against the villein, he hath been barred now, 22 *Ass. p.* 37. and so in an Assise, the Tenant pleads release with warranty by the Ancestor of the plaintiff made to *W. M.* by which the right is extinct, no plea, without shewing how the action of the plaintiff was once extinct by the warranty made to *W.* whose estate he hath, and then good, 22 *Ass. p.* 69. So he that pleads warranty of *J. N.* whose heir the Demandant is, and sheweth not how he is heir, this is error, but if hee shew how he is heir, and the conveyance not to be seen, yet if he be heir in deed, this is sufficient, *viz.* If he say the son of *I* whereas he is in truth the son of *W.* *Quod nota bene*, 37 *Ass. p. 5.*

In Trespass *Vi & armis*, The Defendant sayd, That the place is four acres,

res, of which *I. S.* was seised in fee, to whom *R.* the Ancestor of the plaintiff whose heir he is, released all his right, with warranty by this Deed, &c. whose estate the Defendant hath, and demands judgment, if against this warranty &c. *Quere*, for he conveyed not his title by feoffment, nor otherwise, and *Quere* if *I. S.* were disseisor, and he which had the right hath released unto him, and the Defendant disseised *I. S.* and had the deed, if he shall plead this, by reason of his possession, and by *Pigor* and *Bridges*, it is no plea, but *Starkey* contrary, *Ideo quere*, 21 E. 4. 18.

The Tenant pleads in bar of an Assise, that the plaintiff himself in the seisin of *W.* whose estate he hath, by Charter did give, grant, and confirm the same Tenements to him and his heirs, and bound him and his heirs to warranty, and sayd moreover, that if he were sued by a stranger, that he should be bounden to warrant, as the Assign of *W.* and demanded judgment, and shewed forth the Charter, and the Deed of Assignment, and the Court did compell him to shew how he was the Assign of *W.* 10 E. 4. 41.

In a Formedon in Discender against *W. Trew*. One *I.* Father of the Demandant, released and quite claimed to this *W.* and one *R.* to them and their for ever with warranty, and demands judgment, if &c. And sayd that he had assets &c. *Gayne*. He sheweth not how he hath the estate of *R.* whether by survivorship, or in other manner, so that he was sole voucher, and also he doth not barr us but for the moyety, according as the Tenancy was in him, when the Deed was made. *Sebard*. He is not here in as in way of voucher, but to bar the Action, and you suppose him Tenant of the Tenements by your Writ, by which he shall be received to plead in barr. *Gayne* pleaded nothing by discent in fee, and others contrary, 10 E. 3. 47. *Fitzh. warranty* 56.

In an Assise of Common of pasture, the Defendant pleaded in barr by a Deed of the Father of the Plaintiff, by which he had released and confirmed to the Tenant of the Land to hold in severall with Warranty, the Plaintiff demanded judgment, since that he had brought the Assise of his own seisin, and hath alledged nothing but the Deed of his father, which extinguisheth not his right, if he shew not that his Father had right in the Common at the time &c. of the making, and this he hath not done, and the Warranty in this case falleth not in Barr, for which we pray the Assise: *Bauke*. If he demand the land, shall the Deed of his Fathers Wille against him in barr without Warranty, *quasi dicat non*, no more at this time, thence that the Warranty barrs not in this case, and afterwards he awarded the Assise, for that cause, 22 Assise p. 38.

The Warranty of every Ancestor of them who may have claimed estate before him against whom the Warranty is pleaded, although that they claim not the estate, nor no mention is made of them in the Writ, is not a barr without Assets, for it is lineall, and this shall be shewed by the Tenant in his bar, (*Scil.*) how he might have been his Heir, as where the Tenant in taile hath issue two sons, and discontinueth, and the elder doth



doth release with warranty, and dies without issue, this is lineall to the younger, *Causa qua supra*, but if the elder release with warranty, and dieth, living his father, it is otherwise, for then he was not any wayes in case that he might claim the estate, and so is the diversity, by *Schard*, and *Wilby*, 35 *Ed. 3. Fitzh. warranty* 73.

In Trespasse, if the defendant say, that the place in which &c. was his Freshold at the time &c. now if the Plaintiff will conclude him so to say, by reason of a Feoffment of the ancestor of the defendant whose heir he is, and with warranty &c. and rely upon the warranty, it behoves him to shew the deed thereof, notwithstanding, that it be in a writ of Trespasse &c. *Perkins* 138. d.

A woman brings *sur cui in vita* of Seisin of *Alice* her mother, supposing that the Tenant had not entred till after the Lease which *R.* the husband of *Alice*, made *Scot*, after the death of *Richard* *Alice* was seised of the same Tenements in fee and gave them to one *W.* whose estate the Tenant hath, to him and his heirs for ever, and binds him and his heirs to warranty. *Raffer*, shew how have you his estate, and how doth the warranty extend it self to you? *Scot*, *Alice* did alien to *W.* the ancestor of the Tenant, whose heir he is &c. & *alii contra*, *H. 8. Ed. 3. 10 Fitzh. warranty* 49.

In a Formedon in disceuder by *W.* against one *C.* of a Grant made to *B.* and *C.* his wife. *Belk* *R.* great Grandfather of *W.* now Demandant, gave these Lands to *B.* and *C.* his wife, to them and their heirs in fee, and bound him and his heirs to warranty, and *C.* dieth, and *B.* the husband survived, whose estate the Tenant hath, and demanded Judgment, if against the deed of his ancestor &c. *Cheld*, this *Rich.* is the same person which we have supposed, that gave in Fee Tail to the same *B.* and *C.* and so his plea is contrary to our writ, by which we will aver our Writ. *Belk* I rely onely upon the warranty. *Cheld* but then how have you his estate? *Thorp*, the greatest stranger in the world shall be received by you, to bar by the warranty, without shewing how he had his estate, but in case of voucher it shall not be so, wherefore give an answer. *Cheld*, not the deed of *R.* our ancestor, & *alii contra*, 42 *Ed. 3. 19.*

If I vouch two, and shew their deed to bind them, and the one confesseth the Deed, and the other deems the deed, upon which I sue to issue, and it is found against me, I shall recover against the other but the moiety, yet if I had demurred upon him, upon his confession, and not answered to the other, I should have recovered the whole warranty against him, by *Stone*, and the same Law is where I vouch two, and the one saith that he is within age, and I say, that he is of full age, and it is found for him, I shall recover against the other but the moiety, although that he do acknowledge the deed, and I shall be barred against the infant for ever, *P. 10 Ed. 3. Fitzh. warranty* 75.

LIV. How a man may qualifie the force of a warranty by his Deed.

**W**Here a man gives Lands in Tail, and warrants the Land to him, his heirs and assigns, and he aliens in fee, and dies without issue, this warranty shall be a bar against the Donor in a Formedon, in remitter. *Br. Formedon* 15.7 *Ed.* 3. 35. 46 *E.* 3. 4. *Concord.* 7 *E.* 3. 34. *Fitzh. warranty* 44. 10 *Ed.* 39. *Fitzh. warranty* 52.

Note, that four acknowledged certain tenements to be the right of R. H. and grants the same Tenements to R. H. and M. his wife, and to the heirs of R. and would have them and their heirs bound to warranty &c. and the Court would not permit them, but bound them, and the heirs of one to warranty &c. 21 *Ed.* 3. 27. *Fitzh. warranty.* 31 *concordat. per Cur.* 24 *Ed.* 3. 66. *Fitzh. warranty* 50. but there, because it was of Land in Gavelkind, the warranty was accordingly.

By all the Justices in the Exchequer chamber (except *Juno*) that a man would warrant Lands to bar him and his heirs, but not to be vouched, nor to render in value, he may warrant for him and his heirs against the Dean of P. and his successors, or the like, who have no title, or with this clause *Proviso semper*, that the party nor his heirs, shall not vouch the Feoffor nor his heirs, nor shall recover in value; for he may yet rebut and plead the same in bar, and therefore the *Proviso* doth not restrain all the strength of the warranty, and therefore it is not void, and he may make the warranty absolute, and make a defeasance by Indenture, that if he vouch, that the warranty shall be void &c. and this is held good by all the Justices, and the other way also, by all but *Juno*, yet Sir Robert Brudenell late chief Justice of the Common Pleas devised another warranty, which is now used, (*scil.*) that the warranty for him and his heirs shall warrant against him and his heirs, and by this the Feoffee shall rebut, but not vouch, 7 *Hen.* 2. 43.

If a man infeoff with warranty, provided that the Feoffee nor his heirs shall never have in value by force of the warranty, this is a good condition, because that the Feoffee may take advantage by rebutter, *Perkins* 142 b.

*Vide* the Title of Counterplea of warranty, or of binding. 1. Where a man may vouch by warranty, which begins by disseisin, and yet he shall not be barred by such warranty in an action brought of the same Land: and see there the entry into the warranty, saving to him his action, and entry into the Warranty, as he who is to have nothing by descent, 50 *Ed.* 3. 12.

A man seised in right of his wife aliens in fee, and the heir of the wife confirms the estate to the alienee with warranty in the life of his mother, and after the death of his mother he was barred by the warranty in a *sur*



*cui in vita*, otherwise it had been, if the clause of warranty had not been in the deed, *tunc factum non valeret*, 10 Ed. 2. *Fitzh. warranty* 82.

## The force of Warranty in a deed.

### L V. The force of lineall Warranty.

**H**E which demands fee tail by writ of formedon in *Descender*, shall not be bound by a lineall warranty, but where he hath assets by descent in fee simple from the same ancestor, who made the warranty, *Littleton fol. 160. pla. 18.* agreeth 10 Ed. 3. 47. *Fitzh. warranty* 56. and in *formedon in descender*, of a gift made to his Grandfather in Tail, and he made the descent to N. as son and heir, and from N. to the demandant, as son an heir. *Bacon*, N. your father enfeoffed us in fee by this deed with warranty, Judgement, if the action. *Linc.* you say not that we have assets by descent, and the Statute doth restrain the alienation of the Tenant in Tail, Judgment &c. *Schard*, the Statute speaks of him to whom the Land was given, but sithence that N. is the second in the entail, you cannot say he is restrained by the Statute, *Herl.* you may try the Law, if you will lose your Clients Land, and I tell you that the intent of the Statute was, that the Land so given should continue in the blood, notwithstanding the alienation of none that was in the line, for which cause was the Statute made by all the Councill, and in such manner the Law hath used since that time, and we will not change the Law used since that time, whereupon he said, that assets descended from N. and demanded Judgment, *ut supra* 5 Ed. 3. 19. *Fitzh. warranty* 59.

In a *Formedon in descender*, the Tenant pleaded the Feoffment of the Father of the Demandant with warranty, with this that he would aver that the demandant had assets by descent &c. and the demandant said, he had nothing by descent, and the Jury said, that the Father of the demandant nine dayes before his death, to disavow the warranty, that the Heir should not be barred by the assets, enfeoffed him who is now demandant of the Land, which is supposed he had by descent in fraud &c. whereupon it was awarded, that this fraud should give him no advantage, and that he should take nothing by his writ &c. *M. 34 Ed. 1. Fitzh. warranty* 88. and where Tenant in Tail aliens with warranty and dieth, and assets descend to his son &c. his son shall be charged in a writ of warranty of Charters by the warranty, and shall be vouched. Adjudged by the Court, *temp. Ed. 1. Fitzh. warranty* 89. agreed by *Vavasour Justice*, 21 H. 7. 39.

In a *Formedon in descender*, the Tenant set forth the deed of his ancestor in Tail with warranty, and demanded Judgment, whether against the deed &c. *Gain*, they have not said we have any thing by descent. *Fole*,  
It

It needs not, for the deed bare date before the Statute, and the other cannot gainsay the deed &c. whereupon the Writ abated &c. 12 Ed. 3. Fitzh. warranty 34.

By *Newton*, if the assets be aliened, or recovered, the heir in tail shall resort to his Formedon; notwithstanding the lineall warranty, otherwise upon collaterall warranty, 19 H. 6. 59.

If Tenant in tail hath issue two daughters, and dieth, and the elder enter into the whole, and thereof maketh a Feoffment with warranty, and after dieth without issue, in this case the younger daughter is barred as to the moiety, and as to the other moyety she is not barred, for as to the moyety which belongs to the elder, it is a lineall warranty, and as to the other a Collaterall warranty, *Littl. fol. 160. pla. 16.* whereto agreeth *Perkins* 98. f.

If I be disseised, and my brother release with warranty, and entreth into Religion, his warranty shall bind me, although he be living, for I shall have his Land by descent, and by consequence the warranty is descended, and it is said in the same plea, that if a Parson of a Church be disseised of the Land which he hath in right of his Church, that the Release of his brother with warranty shall bar him for his life &c. in an assise &c. P. 34 Ed. 3. Fitzh. warranty 71.

Lineall warranty shall not be a bar to the issue in Tail without assets, by the equity of the Statute of *Glouc. 11 Ed. 1. Rast. Recognic. Plowden* 127. 2.

**LVI. What shall be said to be assets in a Formedon, with other actions to bar the heir.**

**I**N an assise by *Newton*, If Tenant in tail discontinue and dieth, and assets descend, and the issue alieneth the assets, and bringeth a Formedon, he shall be barred; otherwise it is where he aliens the assets, and afterwards debt or Covenant is brought against him upon his fathers deed. Note the diversity, herewith agrees, 42 Ed. 3. 10. 19 H. 6. 4. 45. and 46.

*Vide titulo formedon* 40. assets by the Tenant in Tail taken in exchange, shall not bind the heir in tail, if the heir agreeth not thereunto, but wavereth the possession, and yet it is otherwise of other land descended, 14 H. 6. 2.

If the demandant in a Formedon be barred by warranty and assets, although the assets be afterwards evicted, yet the Tail is gone for ever, *Quare de hoc*, 3. 4. P. & M. fol. 139. plac. 32.

In a Formedon, the warranty of the ancestor with assets descended &c. was pleaded in bar, and the Demandant said, nothing by descent, the Jury found, that nine dayes before the death of the ancestor, he with intent to hinder the heir of the assets, enfeofeth him of the same Lands &c. by



fraud &c. whereby he was barred, for he shall not take advantage of the fraud, 34 Ed. 1. *Fitzh. warranty* 88. 12 and 13 *Eliz.* 295. *plac.* 16.

In a *Quare impedit*, by *Keble*, an advowson is not assents in a Formedon, for it is not valuable. *Davers* and *Vavasour* contrary, for every 20 l. by the year of an Advowson shall be valued at 20 s. 5 H. 7. 32. *Pollard*, that it is assents, though it be no profit to him to whom it is assents, but a promotion for his friend, the which proves the fee to be in the patron, 12 H. 8. 9. a.

Homage nor fealty are not in assents in a lineall warranty, for they are not valuable, *Perkins* 52. f.

Rent descended to the Issue in Tail by way of extinguishment shall be said to be assents, *Perkins* 54. f. *Fitzh. Assents War.* 29.

The Statute of *Glouc. cap. 3.* grants that upon the alienation of the Tenant by the courtesie, if the warranty be pleaded against the heir, if he hath assents by descent, he shall be barred, but if assents be not then descended, but afterwards do descend by the same father, then the Tenant shall have recovery of the Seisin of the mother by a writ of Judgment, which shall issue out of the Rolls of the Justices before whom the Plea was pleaded &c. and by the equity of the same Statute it is taken, that if the warranty of the Tenant in Tail with assents be pleaded in bar, where he hath not assents, but afterwards assents descend to the issue, the Tenant shall have a *Scire facias* to have the assents, and not the Land Tailed, for if he should have the Land tailed, and hath aliened the assents, the issues inheritable to the entail, should afterwards have their Formedon, and recover the land entailed, because that to make a perpetuall bar against the issue of that which the Feoffee with warranty shall have, it was held more reasonable to give the assents, then the Land in Tail to the Tenant, and upon this reason he had a *Scire fac.* for the assents, and not for the Land in tail, *Plowden* 110. a.

### LVII. The force of Collaterall warranty.

By *Littleton*, Collaterall warranty is a bar to him that demands a fee, and also to him that demands fee tail, without any other descent in fee simple, saving in cases which are restrained by the Statutes, and some other cases, for certain causes, as shall hereafter be mentioned, *Lit. fol.* 160. *plac.* 19. and by 19 H. 6. 59. Collaterall warranty descended shall bind the right, and extinguish the tail and the right: so that a man cannot be remitted after it doth descend, for lineall warranty with assents is a bar to the entail, but collaterall warranty is an extinguishment of the tail, so that although the Tenant in tail, or his issue enter after this, and die seised, and his heir be in by descent, yet he shall not be remitted, for the reason afore said.

Tenant

Tenant in Taile of an Advowson in grosse, grants the same to *W. N.* in fee, and the ancestor collaterall to the Tenant in Taile doth release with VVarranty, and dieth without issue, the Tenant in Tail dieth, the Church is void, *M. N.* presents, and the issue in tail brings a *Quare impedit*, the other pleads the release with warranty, and the dying without issue, and it was adjudged a good bar, for that he claimed the inheritance, otherwise it is if he claimed for term of years, 15 *H.7.9.*

Tenant in Tail of an Advowson in grosse, and a stranger doth present by usurpation, the six months passe, and the usurper grants the advowson to a stranger in fee, and the Tenant in tail dieth, and the collaterall ancestor of the issue in Tail releaseth to the Grantee with warranty and dieth without issue, and the opinion of all the Justices of the Common-Pleas was, that the issue in Tail should be barred, because the Grantee had the fee at the time &c. and by *Vavasor*, if Tenant in Tail of a Rent grant the same in fee, and an ancestor collaterall releaseth to the Grantee with warranty, and dieth without issue, this is a bar, and he saith, that all his fellows were of the same opinion. But if Tenant in Tail of Rent grant the same land in fee with warranty, this shal be no bar, if the issue will distrain, otherwise it is, if he bring a Formedon and admit the discontinuance, and this is where assets is descended with the warranty: but if Tenant in Tail of an Advowson in grosse grant the same in fee and dieth, and his collaterall ancestor release with warranty, and dieth without issue, the Justices said, that this shall be a bar also, but they said, it was not so clear as the usurpation, because the usurper hath the fee by usurpation, 2 *I. H.7.39.*

By *Finchden*, If there be Tenant in Tail, the remainder to *E.* in Tail, the remainder to *C.* in Tail, and the Tenant in tail dieth without issue. *E.* in the first remainder makes a feoffment with warranty, and hath issue, and dieth, and after the issue dieth without issue, and *C.* in the second remainder is heir to him, he shall be barred by this warranty, although that the issue of *E.* shall have nothing by descent, so that he was not barable. *Kirton* Serjeant was of a contrary opinion, 41 *Ed.3.fol.7.*

He which pleads collaterall warranty shall not conclude to the action, 7 *Eliz.27.H.8.fol.22.Fitzh.* that a man may plead warranty and demand judgment, if Action, in Trespasse.

Although the issue, after collaterall warranty cometh to the Land by descent, as by a Feoffment from his father after the warranty, he is not remitted, nor shall put out the Lessee of the Lease of him to whom the warranty was made, forsaith *Dyer*, the warranty binds the right, 7 *Eliz. Bendlofe* saith, that a man cannot make a title by collaterall warranty.

In a forcible entry upon the Statute of 5 *Ri.2.* the defendant pleaded a gift in Tail from his mother, the Plaintiff saith, that after the death of his father, 7. *S.* was seised, to whom his father released with warranty, and it is a good title, 18 *Ed.4.fol.13.*

It seemeth, that a man may make a title at large, in an assise against a collaterall,



collaterall warranty, for that it giveth not the right, 16 *Affise*, in assise the Plaintiff may make his title by collaterall warranty.

*Littleton fol. 159. pla. 14.* saith, If the middle son of Tenant in Tail release to the discontinuee with warranty, and the father dieth, and he die without issue. This is collaterall to the elder son, but if the elder son dieth, it is but lineall to the younger, and it shall not be a bar, and if the warranty had given the right, then nothing descended to the younger.

A man recovers against his mother, and before execution the mother alieneth with warranty and dieth, it shall be a bar, 16 *Aff. 16*.

*Littleton fol. 163. pla. 32. & 33.* saith, That the warranty by Tenant by the courtesie, or Tenant in Dower, or for life, upon a Feoffment by them made, shall bar him in Reversion, if it descend unto him, and yet his entry is lawfull &c. if this warranty had not been.

In an Assise it was in manner agreed, That if a man releaseth with warranty to my Tenant for life, the Reversion to me and dieth, and I sue his heir, yet I shall not be barred, for the Reversion continues in me, but if my Tenant for life be disseised, and my ancestor releaseth with warranty to the disseisor, and dieth, this shall be a bar, 45 *Ed. 3. 21*.

LVIII. *The exposition of the Statute of Westminster 2. ca. 2.*

**F**Ormedon in Reverter, the Tenant pleaded a Feoffment of one *T.* ancestor of the demandant, with warranty in Bar. *Th.* and was Tenant in Tail, whose alienation was restrained by the Statute. *Pole*, you demand the fee &c. and the warranty is at the common Law. *Th.* The Statute willeth, neither by Deed, nor &c. by which words every manner of Deed is extinguished equally for him in the remainder, descender, and reverter, and adjourned, 15 *Ed. 3. Fitzh. warranty 27. & 41 Ed. 3. Fitzh. warranty 16.* In *Formedon* in Reverter, supposing that his father gave the Land, he makes the descent to him. *Bell*, One *Piers* his uncle was seised, and enfeoffed our ancestor, and after released to the same ancestor with warranty, and bound him and his heirs to warrant, and the demandant is heir to *Piers*, Judgment &c. *Kirton*, This *Piers* is the same person to whom the Tenements were given in Tail, and the father of the demandant overlived *Piers*, and the Statute willeth that the issue in Tail, nor he in Reversion shall not be barred by the alienation of the Tenant in Tail, by which, judgment, whether the Deed of the Tenant in Tail &c. *Belk*. The Statute willeth, that the Donor nor his heirs, nor the issue in Tail shall not be barred &c. and this is intended between strangers, and not between privies, for the mischief at the common Law was such, that after issue he that was a stranger, and not privy in blood, should be barred by his Deed, and for this cause was the Statute made, for that this was against the will of the Donor, that the issue should be barred, and also

the inconvenience that the Donor should be barred there, where he was not of the blood, but a stranger; that the issue nor the Donor should not be barred, by which, sithence that he is privy, and demands the Fee-simple, and the warranty continues at the Common Law he shall be barred &c. *Kirton*, The Statute speaks neither of Privies, nor strangers, and the Law is such, that the issue shall avoid the deed.

*Finch*, To what intent do you say, that the Donor survived? *Kirton*, We understood that *Piers* was issue of the Donor, and then the Case is the better for us. *Finch*, You say true, for one way it were the better, and it is said in our year-books, that Justice *Herle* was at the making of this Statute, and he saith, For that the Law was, for that after issue, that the Donor who was a stranger who should be barred, and for this mischief was the Statute made: for which cause sithence the Statute was made for this mischief, and you are out of the mischief, and out of the Statute, it is reason you should be barred, it was adjourned, see 15 *Ed. 3.* the like Case, and 5. 7. 10. and 27 *Ed. 3.* See concerning warranty in the Title of Counterplea of warranty divers times &c. and 7 *Ed. 3.* 48. *Fitzh.* Warranty 46. By *Tren*, the Statute serves not, but for the issue in Tail, and him in the reverter. *Parn.* The Statute willeth, that the will of the Donor shall be observed, and it is the Will of the Donor, that the Tenements remain to him &c. as well, as it shall be, if the Uncle saved the reversion to himself. *Herle*, the Statute willeth, that they to whom the Tenements are given, not having power to aliene, so that it descends not to the issue, or return to the Donor, and in this point the Statute willeth, that the Donors will in all things be observed, but the Statute saith nothing of him in the remainder. *Scot*, If the remainder of the Uncle be entailed to *F.* in fee Tail, he shall not be bound by the Deed of *P.* *Sch.* the Law is otherwise, for he in the remainder, what estate soever is demanded, he is not helped by this Statute &c.

Formedon in descender, of a Deed made to his Grandfather in Tail, and makes the descent to the Father, and from the Father to the Defendant. *Hill*, One *R.* your uncle, brother to your father, whose heir you are, enfeoffed us of the same Land, with warranty, Judgment, if against the warranty. *Clopt.* This *R.* was brother to our father, and issue in tail, and by possibility of the Tail in his life was inheritable, and the intent of those which made the Statute was, that they which were issues in the entail, should not aliene, and as sithence that he had pleaded no discontinuance by the same ancestor, judgment &c. *Belk.* when he that was the younger son made the warranty, if in his life time, you which are the issue of the elder son had died without issue, this warranty shall not be a bar against the issues of the younger son, without a discontinuance, for he was at one time inheritable by the entail, and that lawfully, but against you it shall be a bar, for you were all in another course, then his issues shall be, wherefore be you well advised. Afterwards he pleaded, not the Deed of his Uncle &c. and others were of another opinion, and *sic ad patriam*.



*patriam*, T.8.R.2. *Fitzh. Warranty* 101. And *Per Stone*, The Statute restrains the power of the issue in taile to alien in prejudice of him in Reversion by exprefs words. Then a *Fortiori*, a man shall intend his power to be restrained to prejudice of the issue in taile, where the Statute restrains the power of the Donee: and no man can intend the state of them, who are to be inheritors by reason of the same gift to be of another Condition then the estate of them to whom the Tenements were given. *Schard W.* the brother of the Demandant released to us by the Deed ( as above ) and that Ass ts in lands descended unto him in fee, after the death of the said *W.* &c. 4 E.3. 28. *Fitzh. Warranty* 57. *Concord.* 20. E.3. *Fitzh. Warranty* 39.

Formedon in descender of a Grant made to his Grandfather in taile, and makes the discent to *N.* as son and heir, and from *N.* to the Demandant as son and heir,

*Bacon*, Your Father enfeoffed us in fee by Deed with Warranty, Judgment, if the Action &c.

*Linc.* You say not that we have Assets by discent, and the Statute restrains the alienation of the Tenant in Taile, by which Judgement, &c.

*Schard*, The Statute speaks of him to whom the Lands were given, but sithence that *N.* is the second in the intail, you cannot say that hee is restrained by the Statute.

*Herle*, You may try the Law if you will lose your Clients Land, and I tell you, That the intent of such as made the Statute was, that the Land so given should continue in the blood, notwithstanding the alienation of none which was in the line, for such cause was the Statute made by all the Councill, & in such manner the Law was practised since that time, & now we will not change the Law used ever since that time: whereupon he pleaded that Assers did discent from *N.* and demands Judgment as above, 5 E.3. 19. *Fitzh. War.* 59.

### LIX. The force of Warranty by Disseisin.

**I**N Formedon, the Tenant pleaded a Feoffment with Warranty of the Granfather of the Demandant, whereas the Deed was made to his Father, the Demandant said, that the Grandfather was Donor, and entered upon his Father, who was the Donee, and made a Feoffment with warranty presently, and so the Warranty commenced by disseisin, and it was held a good Replication, and so see, that collaterall warranty which began by disseisin, doth not bind, 46 E.3. 6. *Concord.* 43. E.3. 7. and 50. *Edw.* 3. 12. A man may vouch by a Warranty begun by Disseisin, and hee shall not be barred by such Warranty in an Action brought for the same land.

Formedon

Formedon of a gift made to the Father: *Blaike*, Your Grand-father by this deed which is here enfeofed us with warranty, judgment if &c. *Th.* The Grand-father at the same time held at the Will of our Father, with in that, that he had any other Estate, and so by that deed he could not bar us &c.

*Blaike*, It amounts to so much as that nothing passeth, and issue taken upon it.

*Hill*, Another thing you will not plead. *Blaike*, He was seised of the Freehold, ready &c. Others contrary, 17 E. 3. 41. *Fitzh. warranty* 21 *Concord.* 43 E. 3. 7.

If one that hath no right entreth the house of *A. of B.* & enfeofeth with Warranty Barretors and Extortioners in the Countrey, for to have maintenance of them of the same house by a Deed of Feoffment with Warranty, by force of which the sayd *A. of B.* dare not dwell in the same house, but goeth out of the same house, this warranty beginneth by disseisin because such a Feoffment was the cause that the said *A. of B.* left the possession of the same house, *Litt.* 157. b. *pla.* 6.

If the Father and son purchase certain lands and Tenements to have and to hold of them joyntly &c. and after the Father alieneth the whole to another, and bindes him and his heirs to warranty &c. and after the Father dyeth, this Warranty shall not bar the son of the Moyety which was made unto him of the said Lands and Tenements, because, as to that Moyety which was made to the son, the Warranty began by Disseisin &c. and herewith agree *Newton* and *Paston* 22 H. 6. 51. and *Litt.* 157. *pla.* 5: But by *VV. Herle*, it was apjudged, that if he shall recover the whole in an Assise brought against the Alienee of the Father, 13 E. 3.

LX. Warranty by Devise and Testament.

**I**F Tenant in taile be seised of Lands devisable by Will according to custome &c. and the Tenant in taile doth alien the same Tenements to his Brother in fee, and hath issue and dyeth, and afterwards his Brother deviseth by his Testament the same Lands to another in fee, and bindeth him and his heirs to warrant &c. and dyeth without issue. It seemeth that this Warranty shall not bar the issue in tail, if he will sue his Writ of Formedon, because this Warranty doth not discend to the issue in taile, insomuch as the Uncle of the issue was not bound by force of the same warranty in his life time, nor for that he could not warrant the Tenements in his life time, for that the devise could not take any execution or effect till after his death, and for as much as the Uncle in his life time was not bound to warranty, such Warranty could not discend from him to the issue in tail, &c. for nothing can discend from an Ancestor to his heir, but the same that was in the Ancestor, *Litt. fol.* 166. *plac.* 43.



## LXI. Warranty by Acquietabimus, or Will acquit.

**I**N an *Andita querela*, it is agreed, that Warranty doth imply in it self Recovery in value, and that he which doth covenant to acquit, ought to acquit the party in fact, & that without the words, that he shall render in value or acquit, 46 E. 3. 28. and 6. E. 2. *Fitzh. Voucher* 258. the clause of warranty was this, I and my heirs, against all men will acquit and defend for ever, and it was adjudged by *Berry*, that it was a Warranty, but *Litt. fol. 166.* sayth, that the word *Varrantizabimus*, only makes the Warranty.

## LXII. Release with Warranty.

**A** Man doth lease Tenements for life, the Remainder to H. in fee, the Tenant for life grants over his estate to one R. in whose possession an Ancestor collaterall of H. releaseth with Warranty and dyeth, the first Tenant for life dyeth, and H. enters, and R. outs him, & H. brings an Affise, and the Court was of opinion that H. was not barred, because that by the Release, the estate of R. was not enlarged, 41 E. 3. *Fitzh. Warranty* 15.

In an Affise it is agreed, that where a man releaseth to the Tenant for life, the Remainder over in taile, the Remainder to the right heirs of the Tenant for life, and the Release is with Warranty for him and his heirs, and the Tenant for life grants his Estate over and dyeth, and he in the Remainder in taile enters, that the warranty is determined and avoided, for the Release enures to all the Estates, and the warranty cannot enure but to him to whom it was made, and cannot enlarge his Estate, 44 *Edw.* 3:10.

In an Affise of common of pasture, the Release of the Ancestor of the plaintiff is no barr, although it be with Warranty, for the Warranty doth not extend to the Common, if he were impleaded by a stranger of the Common, he shall not vouch by reason of this Warranty, nor by consequence shall bar him, but the Release of the Plaintiff without warranty is good, but if it be with warranty, and he rely upon the Warranty, it is no barr, 33 E. 3. *Fitzh. warranty* 74.

## LXIII. The force of Warranty defeasible.

**T**enant in taile of Rent, makes a grant thereof with warranty and dyeth, if the issue brings a Formedon, he is barred, because he affirms it to

to be a discontinuance, 13 H.7.10 yet it is agreed there, that the issue may defeat it by another way, that is, by distress, for that it is not a discontinuance, 33 Ed.3. *Br. Formedon* 65. agreeth in all, for it shall be the folly of the heir that he will bring an Action which supposeth him to be out of possession, 21 H.7.40. Where to *Vavisor* agreeth.

If an Infant be disseised, and the Ancestor collaterall doth release with warranty and dyeth, the issue at full age may enter, and defeat the Warranty, but if he bring an assise he shall be barred, for the same being in force, he shall be bound untill it be defeated by entry, 45 H. 6: 63:

It is doubted whether Warranty descended to a woman Covert, having right in Remainder upon the gift in tail made to him who made the Warranty with Remainder to her, whether this shall barr a Formedon in Remainder, see 3 H.7 9.

If Tenant in tale of an Advowson be, and a stranger usurpe, Tenant in taile dyeth, and the Ancestor collaterall releaseth with Warranty and dieth. The opinion of all &c That this shall be a bar to the issue in tail, because the grantee had the fee in the Advowson, before the heir had presented or recovered by action: So if Tenant in tail had granted the Advowson in fee and dyed, and the Ancestor collaterall releaseth with warranty and dyeth, this shall be a barr, 15 H.7.9. adjudged acc. But there the Ancestor who released, dyed before the Tenant in tail which granted &c. and in a Writ of error upon the judgment, the judgment was affirmed, 1 H.5 2. agrees of an usurpation.

Tenant in taile of an Advowson in grosse, aliens with Warranty, the issue in a *Quare impedit* shall be barred by this Warranty with Assets, 43 E.3 25. and 26.

LXIV. If Warranty shall barr notwithstanding no Laches.

**A** Release of the Father with warranty to the disseisor of the Grand father, shall not hurt the Grand father, and if it descend to his son, it shall hurt him, and shall bar him from entry, and action of the fee simple, although there were no laches, for during the life of the Grandfather, the son could not avoid the Warranty, so the warranty of the eldest son descended in the life of the Father, who is deceased, it shall bind the younger son, *Littleton* 154 plac. 11. and 12.

If the eldest son Tenant in tail discontinue with Warranty, this shall barr the middle son in Remainder, yet no Laches, for during the life of the elder brother, he could not bring an action, so if he release with warranty to the discontinuee of his Father with Warranty, *Littleton* fol. 161. pl. 23 and E. 4.12.



Warranty shall be avoided sometimes, because there was no Laches in him upon whom the lands descend, as in case of an Infant within age at the time of the Warranty descended, made by the Tenant in Dower, who alien in fee with warranty, *Littl. fol. 163. plac. 35.*

At the Common Law, the heir shall be barred by Warranty of his father upon alienation made during the Coverture, yet no Laches in the heir, because during the life of his Mother, he could not have action, see *Littl. fol. 163. 164.*

The Uncle releaseth to the discontinnee of the Father, and yeth during the life of the father, this shall bar the son and yet no Laches, *Littleton 159.*

XLV. *Whether Warranty shall make a discontinuance.*

If two parceners issues in taile by diverse venters, be disseised, and the one releaseth with Warranty and dyeth without issue, the other may enter upon the whole, for this warranty is no discontinuance, for the one is not heir to the other, *Litt. fol. 167. pla. 46.*

Tenant for life, the Remainder in tail, Tenant for life dyeth, one intrudes, he in the Remainder in tail, releaseth with Warranty, and it was held a discontinuance, 43 E. 3. 9. 12 & 4 11. agreed by all the Justices, for the release, countervalue, entry, and Feoffment, and the Warranty enures upon the possession of the fee, by which warranty, the entry of the issue is taken away.

If Tenant in taile of a Rent, disseize the Ter-Tenant, and makes a Feoffment in fee with Warranty, this is no discontinuance, because that the Warranty was made of the land. But *Townsend* held, That if the Tenant in taile of the Rent, releaseth to the Ter-Tenant with Warranty, this is a discontinuance, 3 H. 7. 12.

If Tenant in tail of a Rent in possession, granteth it with Warranty, it is a Discontinuance if the Tenant attorn, 4 H. 7. 27. By *Brian*, *Hussey*, and *Fairfax*.

If Tenant in tail of a Seigniorie levy a Fine with Warranty thereof, it is a discontinuance cleerly; but if he releaseth with Warranty to the Ter-Tenant, this no discontinuance, for nothing passeth but his Right which he had *Per se* 43 E. 3. *Per que servitia* 18. If Tenant in taile in Remainder, release to Tenant for life with warranty, this bars the issue with assets, 34 Edm. 3. 9.

How

## How Warranty shall be avoided and defeated by severall means.

LXVI. *If Warranty shall be avoided by Claime and Entry, and how.*

**B**Y *Prisot* clearly, where his Entry is lawfull, there the entry shall avoid a collateral Warranty, 25 Hen. 6. 63: 24 Edw. 3: 38: and 9 Aff p. 15 Ancestor releaseth with Warranty, if the heir enter in the life of him that warranted, the warranty is taken away for ever, (which observe well) and *Babington* 11 H. 6: 51: saith, that warranty cannot be avoided but by entry or continuall claim, which countervails the entry where he dares not enter for fear of death, which shall be expressly so pleaded. And by *Finch* 44 Aff p. 35: If the entry be before the Warranty descend, this shall avoid the Warranty. See the title of Warranty *Car. 11*. That where a man enfeoffs another with warranty, there an entry is lawfull, or by Recovery made or had by a stranger, by an elder title, before that the Tenant hath vouched in a *Precipe quod reddat*, or before request of warranty made in Assise shall defeat the Warranty. Otherwise after voucher or request made: Contrary of a Release made by him that hath a lawfull entry, there this shall not determine the Warranty, for the possession continueth as to this regard: And see more cases there of warranty where they shall be determined, or where it shall remain, and where and how a man shall take advantage of a warranty, and when he shall recover, and when he shall have execution 21 H. 6: 45: and 22 H. 6: 22. and by Justice *Scrope*, If the heir begin his suit freshly upon the alienation, living the Tenant in Dower, he shall not be rebutted by the warranty of the Tenant in Dower after her death, 3 Edw. 3. *North Fitzherbert* 62: but otherwise by *Hill* there,

Whether



## Whether Warranty shall be avoided by Recovery.

LXVII. *Warranty with condition, the Condition being broken the warranty is defeated.*

**B**Y Littleton, The possession avoided, upon which the Warranty is descended, as if a stranger had a lawfull entry by reason of the disseisin, or by a Condition or the like, which is mean between the tail and the possession, and warrants the purchaser, there, when the possession, upon which the Collaterall warranty was made is defeated, the Collaterall Warranty is also defeated. The same Law is, where it cannot descend, by reason that he who made it, is attainted of Felony or the like, 19 H. 6. 59. acc. 9 Edw. 3. 11. Brooke Warranty; 99 acc. Littleton fol. 169. plac. 51. For when a Warranty is made unto a man upon an estate which he then had, if the Estate be defeated, the Warranty is defeated: As if the Discontinuee make a feoffment reserving unto himself a certain Rent, and for default of payment a Re-entry and a Collaterall Warranty of the Ancestor is made to the Feoffee, who hath the estate upon condition, &c. and dyeth without issue, though this warranty descend upon the issue in tail, yet if after the Rent be behind, and the discontinuee entreth upon the Land, then the issue in tail shall have his Recovery by Writ of Formedon, because that the Warranty collaterall is defeated, and so if any such collaterall warranty be pleaded against the issue in tail in an Action of Formedon, he may shew the matter as aforesaid, how the warranty is defeated &c. and so he may well maintain his Action, &c. Littleton fol. 168. plac. 51.

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LXVIII. *The possession avoided upon which the Warranty descends, the warranty is avoided.*

**B**Y Littleton, The possession avoided, upon which the Warranty is descended, as if a stranger hath lawfull entry by reason of the disseisin, or upon condition or the like, which is mean between the taile and the possession, and warrants the purchaser, there, when the possession upon which the collaterall warranty was made, is defeated, the Collaterall Warranty is also defeated. The same Law is, where it cannot descend, by reason that he who made it, is attainted of Felony or the like, 19 H. 6. 59. Concord.

Edw. 3. 11. *Broke Warranty* 99. *Concord.* and *Littleton fol. 168 plac.* 51.

**LXIX.** *Warranty avoided by Reprisall of such Estate as he granted with Warranty.*

**L**ittleton, fol: 168: pla: 52. By taking back of such Estate as he gave with Warranty, the Warranty is defeated, as by re-enseoffment, or discent: As where the Father doth enseoff with Warranty his eldest Son upon whom it discends, the Warranty is extinct and determined, for that it is discended upon him whom he ought to vouch, and he cannot vouch himself of the Fee-simple to gain the Fee-simple; and he is the same person who shall vouch, and which shall render in value, and he cannot render to himself in value. *Kirton*, Where a man hath two Daughters, and enseoffeth the one, and dieth, she may vouch her self, and her Sister; for the Warranty remains for one Moyety. Otherwise it is where the Vouchee is sole Heir, 40 *Ed.* 3: 13: But otherwise it is where he doth not receive or take back so high and large an Estate from his Feoffee, as he gave him, for then the Warranty shall be in suspence during the Estate, and afterwards shall bar the Issue, *Litt: fol: 169: pla: 53.*

In a Formedon. *Norton*, If a man enseoff me with Warranty, and I enseoff him with another, my first Warranty holdeth *Screen*, If two re-enseoff me with Warranty, and I re-enseoff one of them, and he is sued, he shall vouch me, and shall deraign the Warranty against me, and I shall have Warranty against the two again, 11 *H.* 4: 42.

**LXX.** *Warranty by release determined and extinct.*

**I**F Tenant in tail enseoff his Uncle, who enseoffeth another with Warranty, if after the Feoffee by his Deed releaseth to his Uncle all manner of Warranties, or all manner of Covenants reall, or all manner of Demands by such release the Warranty is extinct, *Litt: fol: 170. pla: 59.*

**LXXI.** *Warranty avoided by Attainder, or Outlawry.*

**W**arranty alwaies abideth at the Common Law, and the Common Law is, that when a man is attaint or outlawed of felony, which outlawry is an Attainder in Law, that the blod between him and his Son, and all others which should be said his Heirs, is corrupt, so that nothing by



by descent can descend unto any that may be said to be his Heir. at the Common Law: But the issue in the tail as to the Tenements tailed, shall not be barred, because he is inheritable by force of the Statute, and not by the course of the Common Law: And therefore such Attainder of his Father, of his Ancestor in the intail, shall not put him out of his right, which he should have by force of the intail, *Litt: fol: 169 pla: 54, 55, 56, & 57. & 19 H. 6: 19.*

*LXXII. Warranty avoided, because the Law gives not means to avoid it.*

**I**N the Printed Abridgment of Assises, *fol: 38.* See there in an Assise of Common, the Warranty of the Ancestor is no bar, for it is of another thing which is not in Plaint, and so the Heir cannot enter into the Warranty to defeat the Warranty, and therefore it shall not be a bar to him, because the Law gives him no means by action, nor by entry to avoid it, In a *formedon Cui in vita*, and such Actions in which a man cannot enter, there if the Warranty be descended and pleaded, this is a bar for ever. *Br. Warranty 96. Concor. 34 Ed: 3. Fitz: warranty 96. conc. 22 Ass: p: 38:* the case of Common of Pasture, *Fitz: war. 66. & 33 Ed: 3. Fitz: Warranty 74.*

*LXXIII. Warranty avoided by Plea.*

1. **I**N Assise, the Warranty of the Uncle of the Plaintiff was pleaded, whose Heir he is, and the Plaintiff said, he had never any such Uncle, and it was good, *14 Ass: p: 1.*

2. If an Abbot be disseised, and he release to the Disseisor with Warranty, this is no discontinuance to his Successor, because nothing passeth by this release, but only the right which he had during the time that he was Abbot, and the Warranty is expired by his Deprivation, or by his death, *Litt: fol: 136: pla: 12.*

3. Nothing by descent is a good plea to avoid lineall Warranty, *33 E: 3. Br: Counterplea of warranty 2.*

*LXXIV. Warranty avoided in part shall be avoided in all.*

**I**N Trespasse by all the Justices agreed, If a man gives Lands, the Father, the Son, and the Heirs of the body of the Father, and the Father alieneth

alieneth the Lands with warranty and dieth, the son may enter into the moiety, for the disseisin to him, and have his action for the other moiety. *Ascue*, yet it is to be seen whether he may enter into any parcell, for then the warranty as to that parcell is defeated, and Warranty cannot stand in part, and be defeated in part, by *Newton* and *Passon*, and therefore it seemeth to me, that by the entry in part, the whole warranty is defeated, for all the Justices said that he might enter into the moiety. *Quod nota*, 22 H.6.51. *Conc.* 24 *Ed.* 3.38. *Br. war.* 35. but by *Littleton contra*, fol. 157. plac. 5.

L X X V. Warranty severed shall be lost.

**W**Here there be two joint-tenants, and they make partition between them by their agreement, they both defeat their warranty, but if one of them make a Feoffment of that which belongs to him, yet the other shall have his warranty of the moiety, because there was no default in him, 29 *Ed.* 3. *Fitzb. warranty* 70. and by *Hussey* and *Choke* in *Pracipe quod reddat*. If I enfeof two with warranty, and the one enfeof a stranger of his part, I warrant not to the said second Feoffee, 11 *Ed.* 4.8.

L X X V I. Warranty suspend for a time determined for ever.

**A** Man hath cause of warranty, and yet he cannot take advantage of it, at the time when it is needfull, as against an Abbot or a Bishop in the time of vacancy, or against the heir in his mothers belly, or where there is no other heir at the time, which might be vouched with him, now this warranty is defeated for ever, as it is there said, 38 *Ed.* 3. 29. but otherwise by *Littleton* fol. 169. plac. 53. Where Tenant in Tail enfeoffes another with warranty, and taketh back the estate in Tail, or for life, the remainder over in this case, the warranty is not utterly aniented, but is put in suspence during the estate which the Uncle hath, for after the Uncle is dead without issue &c. then he in the Reversion, or he which is in the remainder shall bar the issue in the tail of his writ of Formedon by the collaterall warranty, but otherwise it is where the Uncle had as great estate in the Land of the Feoffee to whom the warranty was made, as the Feoffee had of him.

Q q q q q

Warran-



**LXXVII** Warranty recovered, and after the Recovery is reversed, the warranty is defeated.

**I**N Dower the Tenant voucheth the heire, and the Demandant hath Judgement against the heir, and the Tenant held peaceably, and after the heir reversed the Judgment by a writ of deceit, and the Demandant brought a new writ of Dower, the warranty is defeated by the falsity of the Tenant, and by the reversall of the Judgment in the writ of deceit, *Tit. Scire fac. in Fitzh. 140.4 Ed. 3. 36. Br. warranty 83.*

**LXXVIII.** Warranty once executed, where it shall be lost.

**I**F I recover Land in value, and after I be sued for the same Lands, I shall not vouch by reason of the former warranty, because that it was once executed, and the same Law is, where I am enfeofed of Rent with warranty, and afterwards the Land cometh in lieu of the Rent, I shall not have warranty of the Land, for a Covenant shall be taken strictly, by *Wilby in Formedon 23. Ed. 3. Fitzh. warranty 77.*

**LXXIX.** Warranty descended, anothers possession who is in the Poss, if it shall be lost.

**I**N an Assise by *A.B.* the Tenant said, that the mother of the Plaintiff being Tenant in Dower, did lease the Land to her villain with warranty, whose heir the plaintiff is, and demanded Judgment &c. and because that he did not shew that the Tenant in Dower died during the Seisin of the villain, so that the collaterall warranty might descend upon the possession of the villain, so that the Right was extinguished in his possession, therefore the Assise was awarded, and so see, that the warranty which descends upon anothers possession, who is in the Poss, as here, of the Lord of a villain, it lyeth not. Note, and so by the Court, if it had been shewed that the warranty had lyen, and the plaintiff barred against the villain, it had been a bar now; and so see that the Lord might rebut by a warranty descended in the possession of his villain, 22 *Assise p. 37.*

Note, if a man release with warranty to a bastard, and the bastard dyeth without heir in the life of him that releated, the Lord entreth for escheat, and then, he that made the warranty dieth, and his heir brings an action against the Lord, he shall not plead this warranty, the reason seemeth to be, for that it is descended upon another possession, then it was when

when it was made, and also this possession is in the *Post*, and not in the *Per*, *Quod nota*, 29 *Aff. pl.* 34.

It is granted upon argument in a writ of error, where a man makes a feoffment with warranty and dieth, his youngest son or bastard may be vouched, but if the *Mulier* dieth without heir, the bastard shall not be vouched, for now the warranty is determined, as where the Lord hath been seised by escheat, and so it seemeth, that the conclusion of the inheritance shall not stay, but between the *Mulier* and the heir, and not between strangers, 5 *Hm.* 7.2.

**LXXX.** Where warranty shall be extinct, the estate being in force.

**I**T seems by *Thorp*, 40 *Ed.* 3.14. If my father enfeoff me with warranty, and dieth seised of Lands in Borsough English, which descends unto my younger brother, the warranty is extinct, for it descends onely upon me, otherwise it is, if the Father enfeoff one of his daughters and dieth, for there she shall vouch her self and her sister, yet upon such Feoffment shewed in the former case, the elder had the voucher, but in the argument of the Case it seemed to *Thorp*, as before, 41 *Ed.* 3.25. he had the Voucher for that cause, 43 *Ed.* 3.23. *Finch*, if my father enfeoff me with warranty and dieth, the warranty is defeated.

Two joint-tenants enfeoff the heir of one of them, and his wife, and they being impleaded vouch the husband, and the heir of the other as Tenants, upon this cause shewed, see 29 *Ed.* 3.46.

Where there be two joint-tenants, and they make partition by their own agreement, they have both lost their warranty, but by the Feoffment of the one of his part, the other shall have his warranty of the moiety, because there was no default in him. *Quere* if the Feoffee of the other shall have the warranty as assignee. It seemeth he shall not, for it is to them both, 29 *Ed.* 3. *Fitzh.* 70. 2 *H.* 6.7. *Rolf* saith, that after Partition, none shall have aid of the other, to have warranty *Peramont*. *Quere*.

One joint-tenant shall not have voucher without his companion, if the jointure continue, but if the moiety be recovered by the default of the one, the other shall have voucher for the moiety, 48 *Ed.* 3.17.

One parcener shall not have the voucher without her companion, unless upon severance after aid prayer, and after Partition, the warranty holdeth between them. So if one after partition make a Feoffment to her son and dieth, this son shall have aid of the other parcener, and they two shall vouch, 47 *Ed.* 3.23. 8 *Ri.* 2. aid of the King 15. If one make a Feoffment before partition, and be vouched she shall have aid of her sister, and they both shall have the warranty *Peramont*.



The Tenant shall have the warranty, notwithstanding the condition broken, if I have not entred for the condition, *Tresl. 5c Edw. 3. 12. 3. Assise 9.*

Warranty of an Abbot is taken away by his deprivation or death, *Litton 136. plac. 12.*

If a Feoffee with warranty, take the Feoffor to husband, it seems to me that the warranty is suspended during the Coverture, but afterwards the heir shall have it, *tamen quere For. 3 Ed. 3. Fitzh. voucher 201.* adjudged that the wife received upon default her husband, shall vouch her husband for such cause shewed, and had it, but otherwise it was against the demandant, which might by receipt of the wife of the Feoffor, and his Seisin which is sufficient to have the voucher, but to bind the husband, it seemeth not.

If a Feoffee reinfoff for life, there the Feoffor being vouched shall revouch by the first warranty, but if *A.* be enfeoffed for life, and *A.* leaseth to the Feoffor for life, there if the Feoffor vouch *A.* he shall not revouch him, as it seemeth against the demandant, 7 Ed. 3. 44.

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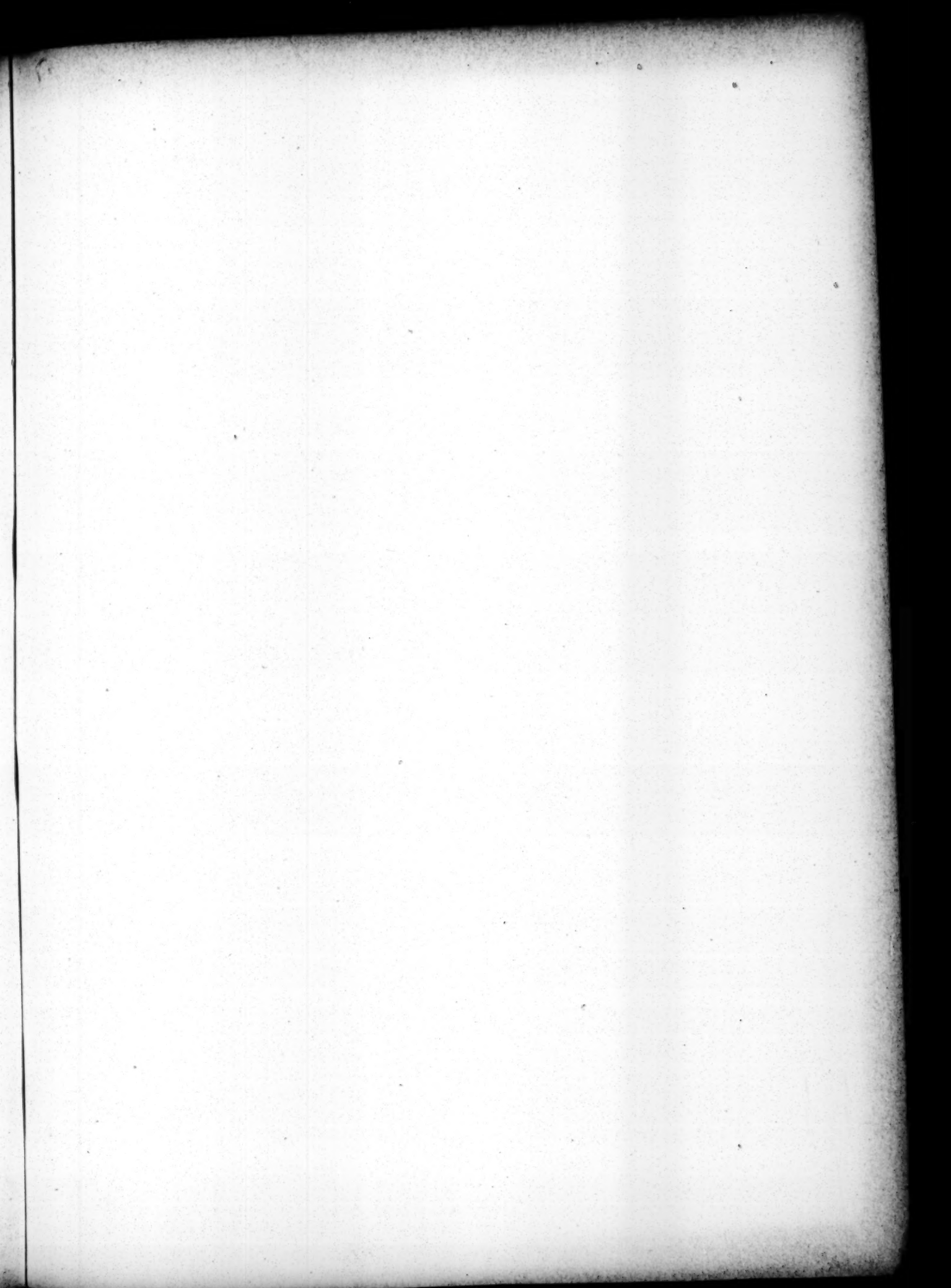
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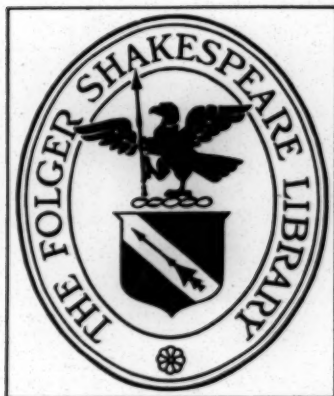






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